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FOUNDATION

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

14 MATEEL ENVIRONMENTAL JUSTICE
15 FOUNDATION,

16 Plaintiff,

17 v.

18 DUALIT LTD, et al.,

19 Defendants.
20

Case No. 472189

(JCR)

~~PROPOSED~~ CONSENT JUDGMENT AS
TO SAECO USA, INC., SAECO
INTERNATIONAL GROUP SPA, and
GAGGIA SPA

21
22 **1. INTRODUCTION**

23 1.1 On or about October 17, 2007, plaintiff MATEEL ENVIRONMENTAL JUSTICE
24 FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the California
25 Attorney General, the District Attorneys of every county in California, the City Attorneys of
26 every California city with a population greater than 750,000, and SAECO USA, INC. and
27 SAECO INTERNATIONAL GROUP SPA (hereinafter collectively, "Saeco"), alleging that
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ENDORSED
FILED
San Francisco County Superior Court

APR 23 2009

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

1 Saeco, through sales in California of espresso machines, was violating Health & Safety Code
2 section 25249.6. Mateel provided a similar notice to GAGGIA SPA (hereinafter "Gaggia") on or
3 about June 27, 2007. Saeco and Gaggia are referred to herein as "Defendants."

4 1.2 On or about February 14, 2008, 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, captioned *Mateel Environmental Justice Foundation v. Dualit Ltd., et al.*, San
7 Francisco Superior Court Case No. 472189 (the "*Dualit* Complaint"), against Saeco based on the
8 allegations contained in the Notice. On or about November 5, 2007, Mateel filed a similar
9 complaint naming Gaggia, captioned *Mateel Environmental Justice Foundation v. Briel-Industria*
10 *de Electrodomesticos SA, et al.*, San Francisco Superior Court Case No. 468856 (the "*Briel*
11 *Complaint*"). The *Dualit* Complaint and the *Briel* Complaint are referred to herein as the
12 "Complaints." The *Dualit* Complaint also named as defendants certain distributors and retailers
13 for Defendants, including JC Penney Corporation Inc., Costco Wholesale Corporation, and Target
14 Corporation (hereinafter collectively, the "Named Distributors").

15 1.3 For purposes of this Consent Judgment, the parties stipulate that this Court has
16 jurisdiction over the allegations of violations contained in the Complaints and personal
17 jurisdiction over Defendants as to the acts alleged in the Complaints, that venue is proper in the
18 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a
19 full and final settlement and resolution of the allegations contained in the Complaints and of all
20 claims which were or could have been raised based on the facts alleged therein or arising
21 therefrom.

22 1.4 Mateel and Defendants enter into this Consent Judgment pursuant to a full and
23 final settlement of disputed claims between the parties for the purpose of avoiding prolonged
24 litigation. This Consent Judgment shall not constitute an admission with respect to any allegation
25 made in the Notice or the Complaint, each and every allegation of which Defendants denies, nor
26 may this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
27 misconduct, culpability or liability on the part of Defendants.

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1 **2. INJUNCTIVE RELIEF - REFORMULATION**

2 **2.0 Injunctive Relief**

3 2.1 After one hundred eighty (180) days of entry of this Consent Judgment (“Effective
4 Date”), Defendants may not ship for sale in California any Covered Products unless Defendants
5 either (a) provide warnings in the manner specified in paragraph 2.2 below; or (b) the Covered
6 Products shipped for sale in California meet the Reformulation Standard set forth in paragraphs
7 2.3 through 2.6 below.

8 2.2 Warnings. Defendants may provide a warning affixed to the packaging or labeling
9 of each unit of the Covered Products. The warning shall state:

10 Notice To Purchasers Of This Product In California As Required
11 By California Health & Safety Code § 25249.6: **WARNING:** This
12 machine uses brass components which contain lead, a chemical
13 known to the State of California to cause birth defects and other
14 reproductive harm.

15 The text of this warning must be in 12 point type or larger. The word “WARNING” must
16 be capitalized and be in bold. The warning must either be on the front or top of the packaging of
17 the Covered Product. Aside from the warnings required in this sub-paragraph, the external
18 packaging of Covered Products may not contain any other language or information that in any
19 way states or implies that a person using the Covered Product will not be exposed to lead, or that
20 in any other way diminishes, confounds or confuses the warning required under this sub-
21 paragraph. If after the Effective Date, Defendants ship Covered Products to a retailer or
22 distributor outside of California that neither provide the warnings specified in this paragraph nor
23 meet the Reformulation Standard specified in paragraphs 2.3 through 2.6 below (“Non-
24 Conforming Covered Products”), and if the retailer or distributor then offers those Non-
25 Conforming Covered Products for sale in California, then as to those Non-Conforming Covered
26 Products, that retailer or distributor, and their customers, are not released pursuant to Sections 6
27 and 7 below.

28 2.3. Reformulation Standard. After the Effective Date, Defendants may ship models of
Covered Products for sale in California that do not bear the warning specified in paragraph 2.2
above, provided the model of Covered Products has been tested pursuant to the protocol described

1 in paragraph 2.4 and has been determined not to leach more than five (5) micrograms of lead per
2 liter ("5 µg/L") into the water used to test the Covered Products.

3 2.4 Testing Program. Defendants shall engage in the following program of testing
4 Covered Products ("Testing Program"), to determine whether warnings are required:

- 5 a) For all tests of all Covered Products, the Exposure Water to be used shall
6 be de-ionized water.
- 7 b) For those Covered Products that are intended to be plumbed to an external
8 water source: pressurize the Exposure Water storage vessel to 50 ± 5.0
9 pounds per square inch ("psi") (350 ± 35 kPa) using nitrogen gas. Collect
10 a 125 ml control sample from the distribution system. Then connect the
11 beverage unit to the Exposure Water storage vessel using only stainless
12 steel valves and fittings and polytetrafluoroethylene (PTFE) tubing.
- 13 c) While operating the beverage unit in accordance with manufacturer's
14 instructions, purge the unit with a volume of Exposure Water equal to
15 between 1.0 and 1.5 times the total volumetric capacity of the unit, or the
16 volume of purge water recommended in the operator's instructions for the
17 particular Covered Product, whichever amount is less. If there are multiple
18 beverage outlets (e.g. dispensing spouts) ensure that approximately equal
19 volumes of Exposure Water are purged from each outlet. Discard the
20 purged water.
- 21 d) With the Exposure Water in contact with all surfaces having contact with
22 beverages under normal idle operating conditions, maintain static
23 conditions for 24 ± 1 hour. Operate the equipment (including any heating
24 operations) as intended without dispensing any water. No ingredients or
25 product are to be added during the exposure period.
- 26 e) After step "d", and while operating the particular Covered Product in
27 accordance with the manufacturer's instructions, draw a 250 ml sample of
28 Exposure Water from the dispensing spout or spouts of the particular

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Covered Product . If there are multiple beverage outlets (e.g. dispensing spouts) ensure that approximately equal volumes of water are drawn from each outlet. Sample should be dispensed into a clean PTFE or polyethylene container with an air-tight lid containing HNO₃ as a preservative.

- f) Repeat steps “d” and “e” two additional times such that there is a composite volume comprised of 3 samples taken at 24 hour intervals.
- g) Analyze each Exposure Water sample and the control sample for the concentration of lead using equipment and a method of analysis which establish a detection limit of five (5) micrograms of lead per liter (“5 µg/L”) or lower for each particular Covered Product tested.
- h) Calculate the average lead concentrations of the three samples that were analyzed pursuant to step “g” to determine the test results for the beverage unit in question.
- i) All Covered Products tested shall be randomly selected using any generally accepted random sampling method such as International Standards Organization 2589-1 (1989), any random method generally accepted by the National Institute for Standards and Technology, or any authoritative text on statistical sampling.
- j) The lot, batch, or other group from which any model of Covered Products tested are drawn must be representative of the entire population of articles of the model of the particular Covered Product in question manufactured in the calendar year or since the date of the last test. In order to accomplish this, Defendants must show that its manufacturing process for the particular model of Covered Product in the Testing Program did not change during the calendar year or since the last test. A manufacturing process change will be deemed to have occurred if there is a material change in: the type of components that make up any alloys used in the plumbing of the

1 model of the particular Covered Product, the suppliers of the components
2 that make up the components of the alloys, or any other factor that
3 substantially affects lead leaching test results on a model of the particular
4 Covered Product.

5 k) The number of Covered Products tested shall be at least six beverage units
6 for each model of the Covered Product, and the mean of at least six tested
7 beverage units shall be calculated.

8 l) After the Effective Date, unless Defendants provide the warning specified
9 in paragraph 2.2 above, Defendants may not ship for sale in California any
10 model of Covered Products unless the mean of at least six tested beverage
11 units calculated according to subparagraph k), above, is $\leq 5 \mu\text{g/L}$.

12 2.5 Record Keeping. As part of the Testing Program, Defendants shall maintain the
13 following records, or require by contract that any laboratory conducting testing shall maintain the
14 following records and will provide them to Plaintiff upon request:

- 15 a) Records kept in the normal course of business showing the maintenance
16 and calibration of equipment used to conduct the Testing Program;
- 17 b) Individual test results of all tests conducted as part of the Testing Program,
18 provided that Defendants shall not be required to maintain the above
19 records for any test for more than two years after that test was conducted.

20 2.6. Any records required to be maintained in by Paragraph 2.5 shall be made available
21 to the Plaintiff or the Attorney General for inspection within the State of California upon 60 days
22 written notice. Such records shall not be made available to the public unless required by the
23 California Public Records Act or other laws, except as part of presenting such records to a court
24 as part of any proceeding.

25 3. MONETARY RELIEF

26 3.1 Within ten (10) days after entry of this Consent Judgment by the Court,
27 Defendants shall pay seventeen thousand five hundred dollars (\$17,500) each to Californians for
28 Alternatives to Toxics and the Ecological Rights Foundation to be used by these California non-

1 profit organizations to about exposure to toxic chemicals or to reduce such exposures. The
2 foregoing settlement payments shall be mailed to the attention of William Verick, Klamath
3 Environmental Law Center, 424 First Street, Eureka, California 95501, who shall provide them to
4 the respective organizations within fifteen (15) days of receipt.

5 **4. ATTORNEYS' FEES**

6 4.1 Within ten (10) days after entry of this Consent Judgment, Defendants shall pay
7 forty thousand dollars (\$40,000) to the Klamath Environmental Law Center to cover Plaintiff's
8 attorneys' fees and costs. This payment shall be mailed to the attention of William Verick,
9 Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

10 4.2 Except as specifically provided in this Consent Judgment, Plaintiff and Defendants
11 shall bear their own costs and attorneys' fees.

12 **5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES**

13 5.1 The terms of this Consent Judgment are enforceable by and among the parties
14 hereto, by Defendants with respect to the releases offered in this Consent Judgment, or, with
15 respect to the injunctive relief provided for herein, by the California Attorney General. The terms
16 of this Consent Judgment are enforceable by the Named Distributors as intended third-party
17 beneficiaries hereto.

18 **6. MATTERS COVERED BY THIS CONSENT JUDGMENT**

19 6.1 This Consent Judgment is a full, final and binding resolution between the Plaintiff
20 acting on behalf of itself and, (as to those matters referenced in the Notice Letters) in the public
21 interest pursuant to Health and Safety Code section 25249.7(d), and Defendants concerning any
22 violation of Proposition 65 regarding any claims made or which could have been made in the
23 Notices and/or the Complaints, or any other statutory or common law claim that could have been
24 asserted against Defendants, and/or their affiliates, parent or subsidiary corporations, divisions,
25 successors, officers, directors, assigns, Named Distributors, distributors, retailers, and/or
26 customers (collectively, "Releasees") as such claims relate to Releasees' failure to provide clear,
27 reasonable, and lawful warnings of exposure to lead contained in or otherwise associated with
28 Covered Products manufactured, sold or distributed by, for, or on behalf of, Defendants.

1 Compliance by Defendants with the terms of this Consent Judgment resolves any issue, now and
2 in the future, concerning compliance by Defendants and/or their affiliates, parent or subsidiary
3 corporations, divisions, successors, officers, directors, assigns, Named Distributors, distributors,
4 retailers, and/or customers with the requirements of Proposition 65 with respect to lead contained
5 in or otherwise associated with Covered Products.

6 6.2 As to any claims, violations (except violations of this Consent Judgment), actions,
7 damages, costs, penalties or causes of action which may arise or have arisen after the original date
8 of entry of this consent judgment, compliance by Defendants with the terms of this consent
9 judgment shall be deemed to be full and complete compliance with Proposition 65 as to claims
10 regarding exposure to lead in Covered Products.

11 6.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
12 benefits which it now has, or in the future may have, conferred upon it with respect to the
13 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which
14 provides as follows:

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

20 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
21 California Civil Code Section 1542 is that the release hereby given shall be and remain in effect
22 as a full and complete release notwithstanding the discovery or existence of any such additional
23 or different claims or facts, arising out of or resulting from, or related directly or indirectly to, in
24 whole or in part, the manufacture, distribution or sale of the Covered Products and Plaintiff will
25 not be able to make any claim for those damages against Defendants, or their parents, subsidiaries
26 or affiliates, or any of their customers, Named Distributors, distributors, wholesalers, retailers or
27 any other person in the course of doing business who may manufacture, use, maintain, distribute,
28 market or sell the Covered Products. Furthermore, Plaintiff acknowledges that it intends these

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

5 6.4 This Consent Judgment extends to and applies to all Covered Products, which
6 shall mean, and includes wherever this term is used in this Consent Judgment, all units and all
7 models of espresso machines manufactured or marketed by Defendants that contain brass parts or
8 components.

9 6.5 Plaintiff shall file a dismissal with prejudice of the Named Distributors within 10
10 days of the entry of this Consent Judgment by the Court.

11 **7. APPLICATION OF JUDGMENT**

12 7.1 The obligations of this Consent Judgment shall apply to and be binding upon any
13 and all Plaintiff, acting in the public interest pursuant to Health and Safety Code section
14 25249.7(d) and the successors or assigns of any of them.

15 **8. MODIFICATION OF JUDGMENT**

16 8.1 This Consent Judgment may be modified only upon written agreement of the
17 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
18 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

19 **9. NOTICE**

20 9.1 When any Party is entitled to receive any notice or report under this Consent
21 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

22 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center,
23 424 First Street, Eureka, California 95501; and

24 (b) For: Saeco: John L. Kortum, Archer Norris, 2033 North Main Street,
25 Suite 800, PO Box 8035, Walnut Creek, CA 94596-3728.

26 9.2 Any Party may modify the person and address to whom notice is to be sent by
27 sending each other Party notice in accordance with this Paragraph.

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1 **10. AUTHORITY TO STIPULATE**

2 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
4 the party represented and legally to bind that party.

5 **11. RETENTION OF JURISDICTION**

6 11.1 This Court shall retain jurisdiction over the matters covered herein and the
7 enforcement and/or application of this Consent Judgment.

8 **12. ENTIRE AGREEMENT**

9 12.1 This Consent Judgment contains the sole and entire, agreement and understanding
10 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the parties.

15 **13. GOVERNING LAW**

16 13.1 The validity, construction and performance of this Consent Judgment shall be
17 governed by the laws of the State of California.

18 **14. COURT APPROVAL**

19 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
20 effect, and cannot be used in any proceeding for any purpose.

21 **IT IS SO STIPULATED:**

22
23 DATED: February ____, 2009

By: _____
Defendants Saeco USA, Inc. and Saeco
International Group SPA

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26
27 DATED: February ____, 2009

By: _____
Defendant Gaggia SPA

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

21 **IT IS SO STIPULATED:**

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23 DATED: February 27, 2009

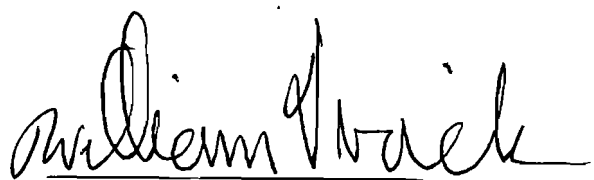
By: 
Defendants Saeco USA, Inc. and Saeco
International Group SPA

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27 DATED: February 27, 2009

By:  MARK J. BOSS
Defendant Gaggia SPA

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DATED: February 28, 2009


William Verick
Mateel Environmental Justice Foundation

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: APR 23 2009
2009

PETER J. BUSCH
JUDGE OF THE SUPERIOR COURT