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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
(Unlimited Jurisdiction)

17 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Case No. 472189

18 Plaintiff,

19 V.

[PROPOSED] CONSENT JUDGMENT AS
TO SALTON, INC.

20 DUALIT, LTD, et al.

21 Defendants.
22 _____ /

24 1. INTRODUCTION

25 1.1 On or about November 7, 2007, plaintiff MATEEL ENVIRONMENTAL
26 JUSTICE FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the
27 California Attorney General, the District Attorneys of every county in California, the City

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Consent Judgment as to Salton, Inc.
Mateel v. Dualit, LTD, et al.
Case No 472189

ENDORSED
FILED
San Francisco County Superior Court

OCT 15 2008

GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

1 Attorneys of every California city with a population greater than 750,000, and Salton, Inc.
2 ("Salton" or "Defendant"), alleging that Defendant, through sales in California of espresso
3 machines, was violating Health & Safety Code section 25249.6.

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 in San Francisco Superior Court, Case No. 472189 ("Complaint") against
7 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
18 allegation made in the Notice or the Complaint, each and every allegation of which Defendant
19 denies, nor may this Consent Judgment or compliance with it be used as evidence of any
20 wrongdoing, misconduct, culpability or liability on the part of Defendant.

21 2. INJUNCTIVE RELIEF-REFORMULATION

22 2.0 Injunctive Relief

23 2.1 Within one hundred eighty (180) days of the date of entry of this
24 Consent Judgment ("Effective Date"), Defendant may not ship for sale in California any Covered
25 Products unless Defendant either 1.) provides warnings in the manner specified in paragraph 2.2
26 below; or 2.) the Covered Products shipped for sale in California meet the Reformulation
27 Standard set forth in paragraphs 2.3 through 2.6 below.

1 2.2 Warnings Defendant may provide a warning affixed to the packaging or labeling
2 of each unit of the Covered Product. The warning shall state:

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

7 The text of this warning must be in 12 point type or larger. The word "WARNING" must be
8 capitalized and be in bold. The warning must either be on the front or top of the packaging of the
9 Covered Product. If after the Effective Date, Defendant ships Covered Products to a retailer or
10 distributor outside of California that neither provide the warnings specified in this paragraph nor
11 meet the Reformulation Standard specified in paragraphs 2.3 through 2.6 below ("Non-
12 Conforming Covered Products"), and if the retailer or distributor then offers those Non-
13 Conforming Covered Products for sale in California, then as to those Non-Conforming Covered
14 Products, that retailer or distributor, and their customers, are not released pursuant to Sections 6
15 and 7 below.

16 _____2.3. Reformulation Standard After the Effective Date, Defendant may ship models
17 of Covered Products for sale in California that do not bear the warning specified in paragraph 2.2
18 above, provided the model of Covered Product has been tested pursuant to the protocol described
19 in paragraph 2.4 and has been determined not to leach more than five (5) micrograms of lead per
20 liter ("5 µg/L") into the water used to test the machines.

21 2.4 Defendant shall engage in the following program of testing espresso machines
22 ("Testing Program"), to determine whether warnings are required:

- 23 a) For all tests of all espresso machines, the Exposure Water to be used shall
24 be de-ionized water.
25 b) For those machines that are intended to be plumbed to an external water
26 source: pressurize the Exposure Water storage vessel to 50 ± 5.0 pounds
27 per square inch ("psi") (350 ± 35 kPa) using nitrogen gas. Collect a 125
28 mL control sample from the distribution system. Then connect the

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beverage unit to the Exposure Water storage vessel using only stainless steel valves and fittings and polytetrafluoroethylene (PTFE) tubing.

- c) While operating the beverage unit in accordance with manufacturer's instructions, purge the unit with a volume of Exposure Water equal to between 1.0 and 1.5 times the total volumetric capacity of the unit, or the volume of purge water recommended in the operator's instructions for the machine, whichever amount is less. If there are multiple beverage outlets (e.g. dispensing spouts) ensure that approximately equal volumes of Exposure Water are purged from each outlet. Discard the purged water.
- d) (1) For those machines that are intended to be plumbed to an external water source: With the Exposure Water in contact with all surfaces having contact with beverages under normal idle operating conditions, maintain static conditions for 24 ± 1 hour. No ingredients or product are to be added during the exposure period. (2) For those machines not plumbed to an external water source, refill the machine with water pursuant to the manufacturer's instructions.
- e) After step "d", and while operating the espresso machine in accordance with the manufacturer's instructions, draw a 250 mL sample of Exposure Water from the dispensing spout or spouts of the machine. 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. For a machine that is not designed to be plumbed to an external water source, if the manufacturer advises to use fresh cold water, it is permissible to discard residual water from the reservoir unless to do so would not be practical for a consumer.

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- 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 espresso machine 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 espresso machines 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 espresso machines tested are drawn must be representative of the entire population of articles of the model of espresso machine in question manufactured in the calendar year or since the date of the last test. In order to accomplish this, Defendant must show that its manufacturing process for the particular model of espresso machine 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 model of espresso machine, the suppliers of the components that make up the components of the alloys, or any other factor that substantially affects lead leaching test results on a model of espresso machine.

- 1 k) The number of espresso machines tested shall be at least six beverage units
2 for each model of espresso machine, and the mean of at least six tested
3 beverage units shall be calculated.
- 4 l) After the Effective Date, unless Defendant provides the warning specified
5 in paragraph 2.2 above, Defendant may not ship for sale in California any
6 model of espresso machine unless the mean of at least six tested beverage
7 units calculated according to subparagraph k), above, is $\leq 5 \mu\text{g/L}$.

8 2.5 As part of the Testing Program, Defendant shall maintain the following records,
9 or require by contract that any laboratory conducting testing shall maintain the following records
10 and will provide them to Plaintiff upon request:

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

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

16 2.6. Any records required to be maintained in by Paragraph 2.5 shall be made
17 available to the Plaintiff or the Attorney General for inspection within the State of California
18 upon 60 days written notice. Such records shall not be made available to the public unless
19 required by the California Public Records Act or other laws, except as part of presenting such
20 records to a court as part of any proceeding.

21 3. MONETARY RELIEF

22 3.1 Within ten (10) days after entry of this Consent Judgment by the Court, Salton
23 shall pay twelve thousand five hundred dollars (\$12,500) to the Center on Race Poverty and the
24 Environment ("CRPE"), a California non-profit organization. These funds are to be used by
25 CRPE to inform the California public about exposure to toxic chemicals, or to prevent or reduce
26 such exposures. The foregoing settlement payment shall be mailed to the attention of William
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1 Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501, who
2 shall provide it to CRPE within fifteen (15) days of receipt.

3 4. ATTORNEYS' FEES

4 4.1 Within ten (10) days after entry of this Consent Judgment, Salton shall pay
5 twenty-five thousand dollars (\$25,000) to the Klamath Environmental Law Center to cover
6 Plaintiff's attorneys' fees and costs. This payment shall be mailed to the attention of William
7 Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

8 4.2 Except as specifically provided in this Consent Judgment, Plaintiff and Defendant
9 shall bear their own costs and attorneys' fees.

10 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

11 5.1 The terms of this Consent Judgment are enforceable by and among the parties
12 hereto, by Defendant Salton with respect to the releases offered in this Consent Judgment, or,
13 with respect to the injunctive relief provided for herein, by the California Attorney General.

14 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

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

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1 and/or customers with the requirements of Proposition 65 with respect to lead contained in or
2 otherwise associated with Covered Products.

3 6.2 As to any claims, violations (except violations of this Consent Judgment), actions,
4 damages, costs, penalties or causes of action which may arise or have arisen after the original
5 date of entry of this consent judgment, compliance by Salton with the terms of this consent
6 judgment shall be deemed to be full and complete compliance with Proposition 65 as to claims
7 regarding exposure to lead in Covered Products.

8 6.3 In furtherance of the foregoing, Plaintiff hereby waives any and all rights and
9 benefits which it now has, or in the future may have, conferred upon it with respect to the
10 Covered Products by virtue of the provisions of Section 1542 of the California Civil Code, which
11 provides as follows:

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

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

1 7. APPLICATION OF JUDGMENT

2 7.1 The obligations of this Consent Judgment shall apply to and be binding upon any
3 and all Plaintiffs, acting in the public interest pursuant to Health and Safety Code section
4 25249.7(d) and the successors or assigns of any of them.

5 8. MODIFICATION OF JUDGMENT

6 8.1 This Consent Judgment may be modified only upon written agreement of the
7 parties and Salton and upon entry of a modified Consent Judgment by the Court thereon, or upon
8 motion of any party as provided by law and upon entry of a modified Consent Judgment by the
9 Court.

10 9. NOTICE

11 9.1 When any Party is entitled to receive any notice or report under this Consent
12 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

- 13 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center,
14 424 First Street, Eureka, California 95501; and
- 15 (b) For Salton: Gary M. Roberts, Sonnenschein Nath & Rosenthal LLP, 601
16 S. Figueroa Street, Suite 2500, Los Angeles, CA 90071, with a copy to:
17 Cathy Bartel, Salton, Inc., 3633 Flamingo Road, Miramar, FL 33027.

18 9.2 Any Party may modify the person and address to whom notice is to be sent by
19 sending each other Party notice in accordance with this Paragraph.

20 10. AUTHORITY TO STIPULATE

21 10.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
23 of the party represented and legally to bind that party.

24 11. RETENTION OF JURISDICTION

25 11.1 This Court shall retain jurisdiction over the matters covered herein and the
26 enforcement and/or application of this Consent Judgment.

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1 12. ENTIRE AGREEMENT

2 12.1 This Consent Judgment contains the sole and entire, agreement and understanding
3 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the parties.

8 13. GOVERNING LAW

9 13.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California.

11 14. COURT APPROVAL

12 14.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
13 effect, and cannot be used in any proceeding for any purpose.

14 IT IS SO STIPULATED:

15 DATED: August 6, 2008

By: Rosa L. Partridge
Defendant Salton, Inc.
General Counsel

17 DATED:

William Verick

William Verick
Mateel Environmental Justice Foundation

20 IT IS SO ORDERED, ADJUDGED AND DECREED:

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Dated: **OCT 15 2008**

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT