

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 E-mail: wverick@igc.org

9 DAVID WILLIAMS, SBN 144479
10 BRIAN ACREE, SBN 202505
11 PUBLIC INTEREST LAWYERS GROUP
12 370 Grand Avenue, Suite 5
13 Oakland, CA 94610
14 Telephone: (510) 271-0826
15 Facsimile: (510) 271-0829
16 E-mail: dhwill7@gmail.com

17 Attorneys for Plaintiff
18 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

19
20
21
22
23
24
25
26
27
28
**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

Plaintiff,

v.

BRINKER RESTAURANT CORPORATION and
CHILI'S INC.,

Defendants.

Case No. CGC-10-505984

CONSENT JUDGMENT

ENDORSED
FILED
San Francisco County Superior Court

MAY 16 2011

CLERK OF THE COURT
BY: GINA GONZALES
Deputy Clerk

1. INTRODUCTION

1.1 On December 9, 2010, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief in San Francisco Superior Court, Case No. 504376, against Defendants Brinker Restaurant Corporation ("Brinker") and Chili's Inc. The Complaint alleges, among other things, that Brinker and Chili's, Inc. (collectively, "Defendants") violated provisions

1 of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections
2 25249.5, *et seq.* ("Proposition 65"). In particular, Mateel alleges that Defendants knowingly and
3 intentionally exposed individuals to lead and lead compounds, lead acetate, lead phosphate, and
4 lead subacetate (collectively referred to herein as "lead") in certain door handles used on entrance
5 doors of "Chili's Grill & Bar" restaurants that Defendants own or operate in California
6 (collectively, "Brass Door Handles"), without first providing a clear and reasonable warning to
7 such individuals. Mateel further alleges that the Brass Door Handles are made of, or that include a
8 component made of, leaded brass, and are used by Defendants in such a way that individuals in
9 California contacting the handles are exposed to lead.

10 1.2 On September 15, 2010, Mateel sent a Notice of Violation letter ("Notice")
11 regarding its claims to Defendants, the California Attorney General, all California District
12 Attorneys, and all City Attorneys of every California city with populations exceeding 750,000.

13 1.3 On February 28, 2011, Defendants answered the Complaint, denying the
14 allegations, asserting affirmative defenses, and denying that Mateel is entitled to any relief.
15 Furthermore, Chili's Inc. asserted that it is not a "person in the course of doing business" in
16 California under Cal. Health & Safety Code § 25249.6 because it does not own, operate, or
17 franchise any restaurants in California, and does not otherwise do business in California, either
18 currently or within the statute of limitations period.

19 1.4 Brinker is a business that owns or operates "Chili's Grill & Bar" restaurants
20 within the State of California that use or used Brass Door Handles.

21 1.5 Under Health and Safety Code Section 25249.9, lead and lead compounds, lead
22 acetate, lead phosphate, and lead subacetate are chemicals known to the State of California to
23 cause cancer, and lead is a chemical known to the State of California to cause reproductive
24 toxicity. Under specified circumstances, businesses that use products containing lead in the State
25 of California are subject to the Proposition 65 warning requirement set forth in Health and Safety
26 Code Section 25249.6.

1 1.6 For purposes of this Consent Judgment, the term "Covered Products" shall be
2 defined as Brass Door Handles, and any replacements of the Brass Door Handles, that are used by
3 "Chili's Grill & Bar" restaurants.

4 1.7 By February, 2011, Brinker confirmed the completion of interim measures to
5 cover Brass Door Handles with a non-lead painted coating to minimize or eliminate the potential,
6 as alleged by Mateel, for lead in the brass components of the Brass Door Handles being available
7 for exposure in any contact surface areas.

8 1.8 For purposes of this Consent Judgment, Mateel and Brinker (collectively, the
9 "Parties" and each of them, a "Party") stipulate that this Court has jurisdiction over the allegations
10 of violations contained in the Complaint and personal jurisdiction over Brinker as to the acts
11 alleged in the Complaints, that venue is proper in the County of San Francisco and that this Court
12 has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
13 allegations contained in the Complaint and of all claims that were or could have *been raised* by
14 any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or
15 arising therefrom or related thereto.

16 1.9 This Consent Judgment resolves claims that are denied and disputed. Mateel and
17 Brinker enter into this Consent Judgment pursuant to a full and final settlement of any and all
18 claims at issue for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
19 constitute an admission with respect to any allegation of the Complaints, each and every allegation
20 of which Defendants deny, nor shall this Consent Judgment or compliance with it be used as
21 evidence of any wrongdoing, misconduct, culpability or liability on the part of Defendants.

22 2. SETTLEMENT PAYMENTS

23 2.1 In settlement of all of the claims referred to in this Consent Judgment, Brinker shall
24 pay a total of \$ 15,000 in civil penalties. Mateel waives its right to receive twenty five percent
25 (25%) of this payment, and, accordingly, the entire \$ 15,000 shall be paid, pursuant to the statute,
26 to the Office of Environmental Health Hazard Assessment (OEHHA). Additionally, a total of
27 \$30,000 shall be paid by Brinker in lieu of, and as an offset for, a greater civil penalty. The total
28

1 amount shall be made payable as follows: \$15,000 dollars shall be made payable to Californians
2 for Alternatives to Toxics; and \$15,000 shall be made payable to Ecological Rights Foundation.

3 2.2 In addition, a total amount of \$ 50,000 shall be paid by Brinker to the Klamath
4 Environmental Law Center ("KELC") as reimbursement for attorneys fees and costs incurred by
5 KELC on behalf of Mateel in investigating and prosecuting this matter and in negotiating this
6 Consent Judgment on behalf of itself and in the public interest. The payments described in
7 Paragraph 2.1 and this Paragraph 2.2 shall be delivered at least 5 days prior to any hearing on a
8 motion to approve this settlement, to William Verick, 424 First Street, Eureka, CA 95501. If
9 payment has not been received as provided in this paragraph, Mateel may withdraw any motion to
10 approve and enter the agreement, and the agreement shall become null and void. If this Consent
11 Judgment has not been approved and entered by the Court within 120 days of the execution of the
12 agreement by Mateel and Brinker, the payments described above shall be promptly returned to
13 Brinker, and the terms of this agreement shall be null and void.

14 2.3 If, after 180 days entry of this Consent Judgment, Brinker has not complied with
15 the provisions regarding final reformulation contained in Section 7, Brinker shall be liable, in
16 addition to any other remedies provided by law for breach of the terms of this Consent Judgment,
17 for an additional \$ 35,000 in civil penalties, subject to the meet and confer requirements of Section
18 5.1.

19 2.4 MEJF and KELC represent and warrant that all recipients of payments in lieu of
20 civil penalties are tax exempt, section 501(c)(3) non-profit organizations and that funds distributed
21 to these organizations pursuant to this Consent Judgment may only be spent to reduce harm from
22 toxic chemicals, or to increase consumer, worker and community awareness of health hazards
23 posed by lead and other toxic chemicals.

24 2.5 Except as specifically provided for in this Consent Judgment, each side shall bear
25 its own costs and attorney's fees.
26
27
28

1 **3. ENTRY OF CONSENT JUDGMENT**

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

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

6 **4.1** As to lead exposures alleged to be caused by Covered Products, this Consent
7 Judgment is a full, final and binding resolution between Brinker and Mateel, acting on behalf of
8 itself and, as to those matters raised in the Notice, acting in the public interest pursuant to Health
9 and Safety Code section 25249.7(d), of all matters that are or that could have been alleged in the
10 Complaints, including any violation of Proposition 65, or the regulations promulgated thereunder,
11 to the fullest extent that any violation could have been asserted by Mateel against Defendants and
12 their parents, subsidiaries, affiliates, divisions, predecessors, successors, assigns, officers,
13 directors, shareholders, attorneys, representatives, agents, customers, employees, and any person
14 or entity that has manufactured, distributed, sold, maintained, or used the Covered Products
15 (collectively, the "Defendant Releasees"), based upon, arising out of, or relating to Defendants'
16 compliance with Proposition 65, or regulations promulgated thereunder, whether based on actions
17 committed by Defendants or by any other Defendant Releasees. As to alleged lead exposures
18 from Covered Products, compliance with the terms of this Consent Judgment by Brinker resolves
19 any issue, now and in the future, concerning compliance by Defendant Releasees with the
20 requirements and standards of Proposition 65. This Consent Judgment also is a full, final, and
21 binding resolution between Mateel and Brinker as to any other matters that could have been
22 asserted against Defendants and any other Defendant Releasees for any alleged failure to disclose
23 the presence of lead in or associated with the Covered Products.

24 **4.2** As to alleged lead exposures associated with Covered Products, Mateel, acting on
25 behalf of itself, and its agents, attorneys, representatives, successors and assigns, waives all rights
26 to institute or participate in, directly, or indirectly, any form of legal action, and releases all
27 claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,
28

1 liabilities, demands, obligations, agreements, promises, royalties, accountings, damages, costs,
2 fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees,
3 and attorney's fees) of any nature whatsoever, whether known or unknown, fixed or contingent
4 (collectively "Claims") against Defendant Releasees. In furtherance of the foregoing, Mateel on
5 its own behalf hereby waives any and all rights and benefits which it now has, or in the future may
6 have respecting the Covered Products, conferred upon it with respect to Claims involving Covered
7 Products by virtue of the provisions of Section 1542 of the California Civil Code, which provides
8 as follows:

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

16 Mateel understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code Section 1542 is that even if Mateel suffers future damages arising out of or
18 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
19 including but not limited to any exposure to, or failure to warn with respect to exposure to lead or
20 lead compounds from, the Covered Products, Mateel will not be able to make any claim for those
21 damages against any Defendant Releasees. Furthermore, Mateel acknowledges that it intends
22 these consequences for any such Claims and any other Claims which may exist as of the date of
23 this release but which Mateel does not know exist, and which, if known, would materially affect
24 its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the
25 result of ignorance, oversight, error, negligence, or any other cause.

26 5. ENFORCEMENT OF JUDGMENT

27 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties.
28 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. The Parties agree that prior to any such enforcement action, they will notify each other of

1 any alleged violation of this Consent Judgment. The Parties further agree to take no enforcement
2 action for 30 days after such notice is given, in order to allow the Parties to meet and confer in
3 good faith in an effort to resolve the alleged violation.

4 **6. MODIFICATION OF JUDGMENT**

5 6.1 This Consent Judgment may be modified only upon written agreement of the
6 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 **7. INJUNCTIVE RELIEF - REFORMULATION**

9 7.1 As discussed in Section 1.7, Brinker agreed to implement and did implement
10 interim measures to minimize the potential, as alleged by Mateel, for lead in the brass components
11 of the Brass Door Handles being available for exposure in any contact surface areas. Further,
12 within 180 days of the entry of the Consent Judgment, Brinker shall reformulate the Brass Door
13 Handles to use a brass alloy or other material with a lead content by weight of no more than 0.03%
14 (300 parts per million, or "300 ppm") ("Final Reformulation Standard") on the entire exterior
15 surface of the Brass Door Handles, regardless of the material comprising the substrate of the Brass
16 Door Handles, but including any material that becomes the exterior surface due to either a wearing
17 down of a surface coating, or the addition of a surface coating which is added in the future.
18 Brinker may comply with the Final Reformulation Standard by relying on information obtained
19 from its suppliers regarding the lead content of the brass alloy or other material used in the
20 manufacture of reformulated Brass Door Handles, provided such reliance is in good faith.
21 Obtaining test results showing that the lead content of the Covered Products is no more than
22 0.03%, using a method of sufficient sensitivity to establish a limit of quantification (as
23 distinguished from detection) of less than 300 ppm shall be deemed to establish good faith
24 reliance. Covered Products that meet the Final Reformulation Standard shall be deemed to
25 comply with the current requirements of Proposition 65 for not requiring a warning for lead
26 exposure.

1 **8. DISMISSAL OF CHILI'S INC.**

2 8.1 Within 10 days of entry of this Consent Judgment, Mateel shall file a request for
3 dismissal of the action without prejudice as to Chili's Inc. in this action. Mateel shall not be
4 entitled to reinstitute any action against Chili's Inc. or any Claims covered in the release in Section
5 4 provided that Brinker complies with the Final Reformulation Standard. Mateel shall
6 additionally comply with the meet and confer requirements of Section 5.1 before attempting to
7 reinstitute any action against Chili's Inc. or any Claims covered in the release in Section 4. In
8 such an event, Chili's Inc. reserves all rights and defenses, including but not limited to seeking
9 dismissal of any such action or claims on the grounds that it is not subject to Proposition 65.

10 **9. AUTHORITY TO STIPULATE**

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

14 **10. RETENTION OF JURISDICTION**

15 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

16 **11. ENTIRE AGREEMENT**

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

23 **12. GOVERNING LAW**

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

1 13. NOTICES

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
4 (registered or certified mail) return receipt requested; or (ii) overnight carrier on any Party by the
5 other Party at the following addresses:

6 To Mateel:
7 William Verick, Esq.
8 Klamath Environmental Law Center
9 424 First Street
Eureka, CA 95501

10 To Defendants:
11 Anna Kutz
12 Brinker Restaurant Corp.
13 Legal Department
14 6820 LBJ Freeway
Dallas, TX 75240

15 With a copy to:
16 Trenton Norris, Esq.
17 Arnold & Porter, LLP
18 One Embarcadero Center, 22nd Floor
19 San Francisco, CA 94111
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. COURT APPROVAL

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:

BRINKER RESTAURANT CORPORATION



By: Jeff Hoban

Its: Vice President, Treasurer,
and Assistant Secretary

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: MAY 16 2011

ORETTA M. GIORGI
JUDGE OF THE SUPERIOR COURT