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18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SAN FRANCISCO

22 MATEEL ENVIRONMENTAL
23 JUSTICE FOUNDATION,,

24 Plaintiff,

25 v.

26 ANTHROPOLOGIE, INC.

27 Defendants.

Case No. CGC-11-511552

ORDER RE:
SETTLEMENT AGREEMENT

28 **1. INTRODUCTION**

1.1 On June 8, 2011 the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") acting on behalf of itself and the general public, filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No. 511552, against Defendant Anthropologie, Inc., ("Anthropologie" or "Defendant"). The Complaint alleges, among other things, that Defendant violated provisions of the Safe Drinking Water and Toxic Enforcement Act of

FILED
San Francisco County Superior Court

SEP 26 2012

CLERK OF THE COURT

BY: *Jana Gonzales* Deputy Clerk

1 1986, Health and Safety Code Sections 25249.5, *et seq.* ("Proposition 65"). In particular,
2 Mateel alleges that Anthropologie has knowingly and intentionally exposed persons to
3 bottle openers, cabinet and door knobs, decorative items and other products made of brass
4 or bronze alloys that contain lead and/or lead compounds (hereinafter "Leaded Brass
5 Products"), without first providing a clear and reasonable warning to such individuals.
6 Lead and lead compounds are chemicals known to the State of California to cause cancer
7 and birth defects or other reproductive harm.

8 **1.2** On March 3, 2011, Mateel sent a Notice of Violation to Anthropologie, the
9 California Attorney General, all California District Attorneys, and all City Attorneys of
10 every California city with populations exceeding 750,000. The March 3, 2011, Notice of
11 Violation alleged that Anthropologie exposed California residents to lead through its sales
12 of Leaded Brass Products.

13 **1.3** On March 9, 2011, Mateel sent a Notice of Violation to Anthropologie, the
14 California Attorney General, all California District Attorneys, and all City Attorneys of
15 every California city with populations exceeding 750,000. The March 9, 2011, Notice of
16 Violation alleged that Anthropologie exposed California residents to lead through its sales
17 of decorative galvanized metal letters ("Galvanized Products") and drinking vessels
18 painted with leaded paint ("Painted Glassware"). The March 3, 2011 Notice of Violation
19 and the March 9, 2011 Notice of Violation are collectively referred to herein as the
20 "Notices of Violations."

21 **1.4** Anthropologie is a business that employs ten or more persons and
22 manufactures, distributes, and/or markets Leaded Brass Products, Galvanized Products,
23 and Painted Glassware within the State of California. Those products are alleged to
24 contain lead and/or lead compounds. Lead and lead compounds are chemicals known to
25 the State of California to cause cancer, and lead is a chemical known to the State of
26 California to cause reproductive toxicity pursuant to Health and Safety Code Section
27 25249.9. Under specified circumstances, products containing lead and/or lead compounds
28 that are sold or distributed in the State of California are subject to the Proposition 65

1 warning requirement set forth in Health and Safety Code Section 25249.6. Plaintiff
2 Mateel alleges that the above-mentioned Products that are made in whole or in part of
3 leaded materials, are manufactured, distributed, sold and/or marketed by Anthropologie
4 for use in California and require a warning under Proposition 65.

5 **1.5** For purposes of this Settlement Agreement, Covered Products shall be
6 defined as Leaded Brass Products, Galvanized Products, and Painted Glassware to the
7 extent such products are distributed and sold within the state of California, and are
8 distributed, marketed and/or sold by Anthropologie.

9 **1.6** For purposes of this Settlement Agreement, the parties stipulate that this
10 Court has jurisdiction over the allegations of violations contained in the Complaint and
11 personal jurisdiction over Anthropologie as to the acts alleged in the Complaint, that
12 venue is proper in the County of San Francisco and that this Court has jurisdiction to enter
13 this Settlement Agreement as a full settlement and resolution of the allegations contained
14 in the Complaint and Notices of Violations, and of all claims that were or could have been
15 raised by any person or entity based in whole or in part, directly or indirectly, on the facts
16 alleged therein or arising therefrom or related thereto.

17 **1.7** This Settlement Agreement resolves claims that are denied and disputed.
18 The parties enter into this Settlement Agreement pursuant to a full and final settlement of
19 any and all claims between the parties for the purpose of avoiding prolonged litigation.
20 This Settlement Agreement shall not constitute an admission with respect to any material
21 allegation of the Complaint and/or Notices of Violations, each and every allegation of
22 which Anthropologie denies, nor may this Settlement Agreement or compliance with it be
23 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
24 Anthropologie. Mateel represents that as of the date this Settlement Agreement is
25 executed, it is not aware of any additional products sold in California by Anthropologie or
26 its affiliates for which an enforcement action under Proposition 65 could be brought.

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1 **2. SETTLEMENT PAYMENT**

2 **2.1** In settlement of all of the claims referred to in this Settlement Agreement
3 against the Settling Defendant, within five days after the Court enters this Settlement
4 Agreement, Anthropologie shall pay \$40,000 to the Klamath Environmental Law Center
5 (“KELC”) to cover Mateel’s attorneys’ fees and costs.

6 **2.2** Within five days after the Court enters this Settlement Agreement,
7 Anthropologie shall pay \$6,000 to the Ecological Rights Foundation (“ERF”) and \$6,000
8 to Californians for Alternatives to Toxics (“CATs”). Both organizations are California
9 non-profit tax exempt organizations. These payments are to be used by ERF and CATs to
10 inform Californians about toxic chemicals or to eliminate or reduce exposures to toxic
11 chemicals. Anthropologie shall also pay \$6,000 in civil penalties. Mateel waives its
12 entitlement to 25% of this amount, and thus the entire amount of civil penalties shall be
13 made payable, pursuant to the statute, to the Office of Environmental Health Hazard
14 Assessment (OEHHA).

15 **3. ENTRY OF SETTLEMENT AGREEMENT**

16 **3.1** The parties hereby request that the Court promptly enter this Settlement
17 Agreement. Upon entry of the Settlement Agreement, Anthropologie and Mateel waive
18 their respective rights to a hearing or trial on the allegations of the Complaint and/or
19 Notices of Violations.

20 **4. MATTERS COVERED BY THIS SETTLEMENT AGREEMENT**

21 **4.1** As to alleged exposures to lead or lead compounds from Covered Products,
22 this Settlement Agreement provides a full release of liability on behalf of the Public
23 Interest to Anthropologie (as well as its past, present and future parents, subsidiaries
24 affiliates, predecessors, successors, and assigns “Released Entities”), and each entity to
25 whom they directly or indirectly distribute or sell Covered Products, including but not
26 limited to distributors, wholesalers, customers, retailers, franchisees, cooperative
27 members, licensors, and licensees (“Downstream Defendant Releasees”), as to all claims
28 and matters raised in the Notices of Violations up through the Effective Date.

1 Notwithstanding any other provision of this Settlement Agreement, no claim or matter is
2 released on behalf of the Public Interest unless that claim or matter was raised in the
3 Notices of Violations

4 **4.2** As to alleged exposures to lead or lead compounds from Covered Products,
5 Mateel, by and on behalf of itself and its respective agents, successors and assigns, waives
6 any and all rights to institute any form of legal action, and releases all claims against
7 Anthropologie and the Released Entities and Downstream Defendant Releasees, and all of
8 their respective parents, subsidiaries or affiliates, and all of their suppliers, customers,
9 distributors, wholesalers, retailers, or any other person in the course of doing business,
10 and the successors and assigns of any of them, who may use, maintain, distribute or sell
11 the Covered Products, whether, under Proposition 65 or otherwise, arising out of or
12 resulting from, or related directly or indirectly to, in whole or in part, the Covered
13 Products, including but not limited to any exposure to, or failure to warn with respect to,
14 the Covered Products (referred to collectively in this paragraph as the "Claims"). In
15 furtherance of the foregoing, as to alleged exposures to Covered Products, Mateel hereby
16 waives any and all rights and benefits which it now has, or in the future may have,
17 conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of
18 the California Civil Code, which provides as follows:

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

24 **4.3** Mateel understands and acknowledges that the significance and
25 consequence of this waiver of California Civil Code section 1542 is that even if Mateel
26 suffers future damages arising out of or resulting from, or related directly or indirectly to,
27 in whole or in part, the Covered Products, including but not limited to any exposure to, or
28 failure to warn with respect to exposure to, lead or lead compounds from Covered

1 Products, Mateel will not be able to make any claim for those damages against
2 Anthropologie or the Released Entities or the Downstream Defendant Releasees.
3 Furthermore, Mateel acknowledges that it intends these consequences for any such Claims
4 as may exist as of the date of this release but which Mateel does not know exist, and
5 which, if known, would materially affect their decision to enter into this Settlement
6 Agreement, regardless of whether their lack of knowledge is the result of ignorance,
7 oversight, error, negligence, or any other cause.

8 **5. ENFORCEMENT OF JUDGMENT**

9 **5.1** The terms of this Settlement Agreement shall be enforced exclusively by the
10 parties hereto. The parties may, by noticed motion or order to show cause before the
11 Superior Court of San Francisco County, giving the notice required by law, enforce the
12 terms and conditions contained herein.

13 **6. MODIFICATION OF AGREEMENT**

14 Except as provided for in Paragraph 7.5, this Settlement Agreement may be
15 modified only upon written agreement of the parties and upon entry of a modified
16 Settlement Agreement by the Court thereon, or upon motion of any party as provided by
17 law and upon entry of a modified Settlement Agreement by the Court.

18 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNINGS**

19 **7.1** Covered Products shall be deemed to comply with Proposition 65 and be
20 exempt from any Proposition 65 warning requirements with respect to exposures to lead
21 and lead compounds if the brass that is part of the Covered Products meets the following
22 criteria: (a) for Leaded Brass Products or Galvanized Products, the alloy from which the
23 products are made, or the galvanizing solution in which the products are submerged, shall
24 have a lead content by weight of no more than 0.03% (300 parts per million, or "300
25 ppm"), (b) for Painted Glassware, the paint used in must contain no intentionally added
26 lead, and in no event have a lead content of more than .03% (300 parts per million, or
27 "300 ppm").
28

1 to the State of California to cause cancer, birth defects and
2 other reproductive harm.

3 7.5 The requirements for product labeling, set forth above are imposed pursuant
4 to the terms of this Settlement Agreement. The parties recognize that product labeling is
5 not the exclusive method of providing a warning under Proposition 65 and its
6 implementing regulations. If Proposition 65 warnings for lead or lead compounds should
7 no longer be required, Anthropologie shall not have any further warning obligations
8 pursuant to this Settlement Agreement. In the event that Anthropologie ceases to
9 implement or modifies the warnings required under this Settlement Agreement because of
10 a change in the law, Anthropologie shall provide written notice to Mateel (through KELC)
11 of its intent to do so, and of the basis for its intent, no less than thirty (30) days in
12 advance. Mateel shall notify Anthropologie in writing of any objection within thirty (30)
13 days of its receipt of such notice, or such objection by Mateel shall be waived.

14 8. **AUTHORITY TO STIPULATE**

15 Each party to this Settlement Agreement certifies that its signatory is fully
16 authorized by the party he or she represents to enter into this Settlement Agreement and to
17 execute it on behalf of the party represented and legally to bind that party.

18 9. **RETENTION OF JURISDICTION**

19 This Court shall retain jurisdiction of this matter to implement the
20 Settlement Agreement.

21 10. **ENTIRE AGREEMENT**

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

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1 **11. GOVERNING LAW**

2 The validity, construction and performance of this Settlement Agreement
3 shall be governed by the laws of the State of California, without reference to any conflicts
4 of law provisions of California law.

5 **12. COURT APPROVAL**

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

8
9 **IT IS SO STIPULATED:**

10 DATED: 6/4/12

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

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16 DATED: June 4, 2012

ANTHROPOLOGIE, INC.

By: 

Name: David McGrath
Its: Chief Executive Officer, Anthropologie Group

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

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22 DATED: 9/26/12



JUDGE OF THE SUPERIOR COURT

ERNEST H. GOLDSMITH