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JUN 14 2019

CLERK OF THE COURT

BY: Will [Signature] Deputy Clerk

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO

19 MATEEL ENVIRONMENTAL JUSTICE
20 FOUNDATION,

CASE NO. CGC-18-564892

(Reservation No. 04250614-09)

21 Plaintiff,

~~PROPOSED~~ ORDER APPROVING
CONSENT JUDGMENT (NOWHERE
PARTNERS CORP.)

22 vs.

23 NOWHERE PARTNERS CORP., et al.,

Date: June 14, 2017
Time: 9:30 a.m.
Dept. No.: 302

24 Defendants.

25 Plaintiff's motion for approval of settlement and entry of Consent Judgment was heard on
26 noticed motion on June 14, 2019. The court finds that:

27 1. The warnings and reformulation the Consent Judgment requires comply with the
28 requirements of Proposition 65.


1 2. The payments in lieu of civil penalties specified in the Consent Judgment are
2 reasonable and conform to the criteria of Health & Safety Code § 25249.7(b)(2).

3 3. The attorneys fees awarded under the Consent Judgment are reasonable as are the
4 rates awarded the attorneys.

5 Based on these findings, the settlement and the Consent Judgment are approved.

6 IT IS SO ORDERED.

7 Dated: 6/14/19



Judge of the Superior Court
RICHARD ULMER

6

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FILED
San Francisco County Superior Court

JUN 14 2019

CLERK OF THE COURT

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

15 MATEEL ENVIRONMENTAL JUSTICE
16 FOUNDATION,

CASE NO. CGC-18-564892

[PROPOSED] CONSENT JUDGMENT

17 Plaintiff,

18 vs.

19 NOWHERE PARTNERS CORP. and TYP
20 RESTAURANT GROUP, INC.

21 Defendants.

22
23 1. INTRODUCTION

24 1.1. On or about December 7, 2017, plaintiff MATEEL ENVIRONMENTAL
25 JUSTICE FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the
26 California Attorney General, the District Attorneys of San Francisco County, the City Attorneys
27

1 of San Francisco, every California city with a population greater than 750,000, and defendant
2 Nowhere Partners Corp. (“Nowhere” or “Defendant”), alleging that Defendant, through sales in
3 California of draft kombucha, was violating the California Safe Drinking Water and Toxic
4 Enforcement at, also known as “Proposition 65,” codified at Health and Safety Code § 25249.5
5 *et seq.*

6 1.2. On March 8, 2018, plaintiff Mateel, acting in the public interest pursuant to
7 Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief
8 in San Francisco County Superior Court, Case No. CGC-18-564892 (“Complaint”) against
9 Defendant based on the allegations contained in the Notice.

10 1.3. This case involves lead (“Pb”) exposures that Mateel alleges are caused by “draft
11 kombucha” (as used herein, means kombucha served from Kombucha Dispensing Equipment)
12 sold at some stores Nowhere operates in California. Mateel’s complaint alleged that the
13 equipment Nowhere used to dispense draft kombucha—what are commonly referred to as “taps”
14 of the sort that taverns use to dispense draft beer—have valves and fittings made from leaded
15 brass. Draft kombucha, when served through this equipment, makes contact with this leaded
16 brass and causes Pb to leach into the kombucha. For purposes of this Consent Judgment, the
17 equipment used to store and serve draft kombucha, including the casks, taps, valves, lines and
18 fittings, shall be referred to as “Kombucha Dispensing Equipment.” As a remedy Mateel sought
19 either to have Nowhere reformulate the equipment it utilizes to dispense draft kombucha or to
20 have Nowhere provide a clear and reasonable warning within the meaning of Health and Safety
21 Code § 25249.6.

22 1.4. Nowhere is a business that employs more than ten people. Nowhere sells in the
23 State of California kombucha dispensed from Kombucha Dispensing Equipment. During a time
24 period pertinent to this enforcement action, the Kombucha Dispensing Equipment utilized parts,
25 the surfaces of which contained Pb, and these parts regularly contacted the kombucha that
26 flowed through this equipment.

27 1.5 Pursuant to Health and Safety Code § 25249.8, Pb is a chemical known to the
28 State of California to cause cancer and reproductive toxicity. Under certain circumstances,

1 products containing Pb that are sold or distributed in California are subject to Proposition 65's
2 warning requirement. Mateel alleges that the draft kombucha Nowhere sells, when served via
3 Kombucha Dispensing Equipment with food contact surfaces that contain Pb, requires a
4 Proposition 65 warning.

5 1.6 For purposes of this Consent Judgment only, and without waiving any arguments
6 to the contrary that it might assert in any other matter, Nowhere agrees not to contest the court's
7 jurisdiction over the allegations of violations contained in the Notice and the complaint, and over
8 Nowhere, and to enter and enforce the provisions of this Consent Judgment as a full and final
9 settlement and resolution of the allegations made against Nowhere contained in the Notice or
10 arising therefrom, to the extent those allegations pertain to lead exposures caused by kombucha.
11 For purposes of this Consent Judgment only, Nowhere agrees that venue is proper in the City and
12 County of San Francisco. Both parties to this agreement stipulate to the court's jurisdiction to
13 enter and enforce the provisions of this Consent Judgment as a full and final settlement and
14 resolution of the allegations made against Nowhere to the extent those allegations pertain to lead
15 exposures caused by kombucha.

16 1.7 This consent judgment resolves all claims in the Notice and complaint to the full
17 extent those claims pertain to lead exposures caused by kombucha served via Kombucha
18 Dispensing Equipment. Nowhere denies and disputes all allegations made in the Notice and in
19 the complaint. This Consent Judgment shall not constitute an admission with respect to any
20 allegation made in the Notice, nor may this Consent Judgment or compliance with it be used as
21 an admission or evidence of any fact, wrongdoing, misconduct, culpability, violation of law or
22 liability on the part of Nowhere or any person or entity released herein in any other lawsuit or
23 legal proceeding.

24 2. INJUNCTIVE RELIEF

25 2.1 No later than 90 days after the Effective Date, and as to all Nowhere stores in
26 California, any in-store Kombucha Dispensing Equipment shall have no food contact surfaces
27 that contain lead. Nowhere meets this requirement if all metallic food contact surfaces in the
28 dispensing equipment are made from stainless steel.

1 2.2 As to all Nowhere stores in California, draft kombucha shall contain Pb at a
2 concentration no greater than one (1) microgram of Pb per liter of kombucha. Nowhere meets
3 the requirements of this sub-paragraph if a commercially-available analysis of draft kombucha
4 performed during the prior twelve (12) month period demonstrates compliance with the one (1)
5 microgram or less of Pb per liter level, when using a method of analysis that is able to resolve Pb
6 in kombucha at a concentration of one (1) microgram per liter or less.

7 2.3 In the event Nowhere satisfies the provisions of this Section 2, draft kombucha
8 may be sold without any warning concerning the presence of chemicals that cause cancer, birth
9 defects and other reproductive harm.

10 3. ENTRY OF CONSENT JUDGMENT

11 3.1 The parties hereby request that the court promptly enter this Consent Judgment.
12 Upon entry of this Consent Judgment, the Parties waive their respective rights to a hearing or
13 trial on the allegation made in the Complaint.

14 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

15 4.1 Mateel's Release on Behalf of the Public Interest. As to all exposures to Pb
16 alleged in the Notice to be caused by kombucha, this Consent Judgment provides a full release of
17 liability on behalf of the Public Interest for all claims that were or could have been brought up
18 through the Effective Date (which shall be the date the court enters this Consent Judgment). As
19 to all exposures to Pb alleged in the Notice to be caused by kombucha that is in the stream of
20 commerce as of the Effective Date, this Consent Judgment also provides a full release of liability
21 on behalf of the Public Interest to Nowhere and its past, present and future parents, holding
22 companies, controlling entities, joint ventures or other investment vehicles, related or affiliated
23 companies, subsidiaries, predecessors, successors, and assigns to any of them for all claims that
24 were or could have been brought up through the Effective Date. Notwithstanding any other
25 provision of this Consent Judgment, no claim or matter is released on behalf of the public
26 interest unless that claim or matter was raised in the Notice.

27 4.2 Mateel's Release on Behalf of Itself. As to kombucha, Mateel, acting in its
28 individual capacity only and not in its representative capacity, waives all rights to institute any

1 form of legal action and releases all claims which were or could have been brought up through
2 the Effective Date. As to kombucha that is in the stream of commerce as of the Effective Date,
3 on behalf of Mateel in its individual capacity, this Consent Judgment also provides a full release
4 of liability to Nowhere and its past, present and future parents, holding companies, controlling
5 entities, joint ventures or other investment vehicles, related or affiliated companies, subsidiaries,
6 predecessors, successors, and assigns to any of them for all claims that were or could have been
7 brought up through the Effective Date. In furtherance of the foregoing, Mateel, acting on behalf
8 of itself, hereby waives any and all rights and benefits which it now has, or in the future may
9 have, conferred upon it with respect to Pb exposures alleged to be caused by kombucha by virtue
10 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

16 Mateel understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code § 1542 is that even if Mateel has future claims arising out of or resulting
18 from, or related directly or indirectly to, in whole or in part, kombucha, it will not be able to
19 pursue that claim against Nowhere, nor may it pursue such a claim against any and all entities
20 related to Nowhere including, but not limited to, its past, present and future parents, holding
21 companies, controlling entities, related or affiliated companies, subsidiaries, predecessors,
22 successors and assigns to any of them. Furthermore, Mateel acknowledges that it intends these
23 consequences for any such claims which may exist as of the date of this release but which Mateel
24 does not know exist, and which, if known, would materially affect its decision to enter into this
25 Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
26 oversight, error, negligence or any other cause. Mateel does not release any entity that supplies
27 Nowhere with kombucha intended to be served from Kombucha Dispensing Equipment for sale
28 in California.

5. SETTLEMENT PAYMENT

1 5.1 In settlement of all the claims pertaining to Pb exposures alleged to have been
2 caused by draft kombucha, Nowhere shall pay a total amount of \$25,000, which shall be
3 allocated as follows: \$1,000 shall be paid as a civil penalty; \$24,000 shall be paid to the Klamath
4 Environmental Law Center (“KELC”) to cover a portion of Mateel’s attorneys fees and litigation
5 costs. The above-referenced \$1,000 civil penalty shall be made payable to California’s Office of
6 Environmental Health Hazard Assessment (“OEHHA”). If the Consent Judgment is entered by
7 the court, within five days of that date, Nowhere’s counsel shall ensure the above described
8 payments are delivered via UPS or FedEx for next business day delivery, to Klamath
9 Environmental Law Center, 1125 Sixteenth Street, Suite 204, Arcata, California 95521. If this
10 Consent Judgment is not entered by the court within 120 days, the provisions of this Consent
11 Judgment shall be null and void.

12 6. ENFORCEMENT OF JUDGMENT

13 6.1 The terms of this Consent Judgment shall be enforced exclusively to the Parties
14 hereto.

15 7. MODIFICATION OF JUDGMENT

16 7.1 This Consent Judgment may be modified only upon entry of a modified Consent
17 Judgment by the court. Any party may seek such modification by noticed motion, with notice
18 provided to both the other party and to the Attorney General.

19 7.2 Mateel agrees not to contest a Nowhere motion to modify this Consent Judgment
20 in the event Nowhere has sought, and obtained, written consent from the Attorney General to
21 such modification. Mateel also agrees not to contest a Nowhere motion to conform this Consent
22 Judgment to any “safe use determination” established by OEEHA, pursuant to 27 Cal. Code
23 Regs. § 25204 or any successor regulation, regarding Pb content of Kombucha Dispensing
24 Equipment.

25 8. NOTICE

26 8.1 When any party is entitled to receive any notice or report under this Consent
27 Judgment, the notice or report shall be made in writing and sent via U.S. Mail or other manner of
28 overnight delivery to the following:

1 8.1.1 For Mateel: William Verick, Klamath Environmental Law Center, 1125
2 Sixteenth Street, Suite 204, Arcata, CA 95521.

3 8.1.2 For Nowhere: Maurice Wainer, Snipper, Wainer & Markoff, 232 North
4 Canon Drive, Beverly Hills, CA 90210-5302, telephone (310) 550-5770, e-mail
5 mrwainer@swinfirm.com.

6 8.1.3 For Nowhere, a copy to: Robert S. Nicksin, O'Melveny & Myers LLP,
7 400 South Hope Street, 18th Floor, Los Angeles, CA 90071, telephone (213) 430-6273, e-mail
8 bnicksin@omm.com

9 9. AUTHORITY TO STIPULATE

10 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the party he or she represents to enter this Consent Judgment and to execute it on behalf of the
12 party represented and legally to bind that party.

13 10. RETENTION OF JURISDICTION

14 10.1 This court shall retain jurisdiction to implement this Consent Judgment.

15 11. ENTIRE AGREEMENT

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

22 12. GOVERNING LAW

23 12.1 The validity, construction and performance of this consent judgment shall be
24 governed by the laws of the State of California, without reference to any conflicts or law
25 provisions of California law.

26 13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

27 13.1 Mateel agrees to comply with Health & Safety Code § 25249.7's reporting and
28 approval requirements and as implemented by various regulations.

1 14. EXECUTION IN COUNTERPARTS

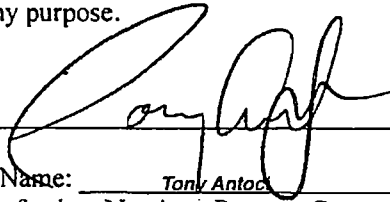
2 14.1 This Consent Judgment may be executed in counterparts and/or by facsimile, which
3 taken together shall be deemed to constitute one original document.

4 15. COURT APPROVAL

5 15.1. If this Consent Judgment is not approved by the court, it shall be of no force or
6 effect, and cannot be used in any proceeding for any purpose.

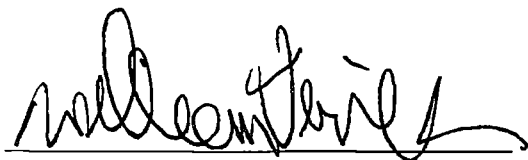
7 IT IS SO STIPULATED:

8 DATED: 03/18/19

By:  _____

Print Name: Tony Antoci
For Defendant Nowhere Partners Corp.


9
10
11
12 DATED: 4-25-19

 _____

William Verick, CEO of Mateel
Environmental Justice Foundation

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15
16 IT IS SO ORDERED, ADJUDGED AND DECREED:

17
18 Dated: 6/14/19

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JUDGE OF THE SUPERIOR COURT

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