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11 Attorneys for Plaintiff  
12 Mateel Environmental Justice Foundation.

13 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
14 IN AND FOR THE COUNTY OF SAN FRANCISCO

15 MATEEL ENVIRONMENTAL JUSTICE )  
16 FOUNDATION, )  
17 )  
18 Plaintiff, )  
19 )  
20 v. )  
21 )  
22 PAN OCEANIC EYEWARE, LTD., ROMAR )  
23 INTERNATIONAL CORP, WAL-MART )  
24 STORES, INC., WESTPORT )  
25 CORPORATION, and DOES 1 through 100 )  
26 inclusive, )  
27 )  
28 Defendants. )

Case No. CGC-06-457611

**STIPULATION OF SETTLEMENT  
and ORDER THEREON**

24 Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION  
25 ("Plaintiff"), on the one hand, and Defendant WAL-MART STORES, INC. ("Wal-Mart"), on

EXH. A

1 the other hand, enter into, and request the Court approve, the following Stipulation of  
2 Settlement and Order Thereon.

3 **RECITALS**

4 A. On or about July 12, 2006 Plaintiff sent to the Office of the Attorney  
5 General of the State of California, the District Attorneys of all California counties with  
6 populations exceeding 750,000, the City Attorneys of all California cities with populations  
7 exceeding 750,000, and served Wal-Mart with a 60-day Notice Letter alleging that Wal-Mart  
8 was in violation of Proposition 65, in connection with Wal-Mart's alleged manufacture,  
9 distribution and/or sale of units of the CD carrying case and organizer identified as CD  
10 Organizer 24 Capacity #T-60175B (the "Product"). Specifically, Plaintiff alleged that persons  
11 handling the Product were exposed to certain chemicals listed under Proposition 65, including  
12 lead;  
13

14 B. On April 6, 2007, Plaintiff filed in the San Francisco Superior Court a  
15 complaint (the "Complaint") against Wal-Mart and others, commencing the action entitled  
16 *Mateel Environmental Justice Foundation v. Wal-Mart Inc., et al.*, Case No. 05-442958 (the  
17 "Action"). The Complaint alleged, *inter alia*, that Wal-Mart violated Proposition 65 by (i)  
18 manufacturing, marketing and/or distributing to California residents the Product, and (ii) failing  
19 to provide clear and reasonable warnings to California residents where the handling and use of  
20 such products, in the normally intended manner, will result in exposure to Proposition 65  
21 chemicals;

22 E. On April 6, 2007, Plaintiff and Wal-Mart filed their executed Stipulation  
23 limiting the scope of the Action with regard to Wal-Mart to the Product units;

24 D. On April 6, 2007, Wal-Mart filed its answer denying the Complaint's  
25 allegations, denying that any violation of Proposition 65 exists, and asserting affirmative  
26 defenses; and  
27

1 F. In order to avoid the costs and expenses of litigation, and without  
2 admitting liability or wrongdoing, the Parties hereto have elected to resolve these matters by  
3 settlement and on the terms set forth below.

4 **STIPULATION AND AGREEMENT**

5 **1. Remedial Obligations.**

6 **1.1 Discontinuation of Retail Sale In California**

7 Within forty-five (45) days after the Court's entry of this Stipulation for  
8 Settlement and Order Thereon, Wal-Mart agrees to no longer offer for retail sale in California,  
9 any units of the Product (hereafter "Covered Product") for retail sale in California.

10 **1.2 Warnings Provide On Any Future Sale**

11 In the event the Covered Product is sold at retail in California after the forty-five  
12 (45) days the Court's entry of this Stipulation for Settlement and Order Thereon, Wal-Mart shall  
13 provide one of the Proposition 65 warning described below or any other Proposition 65 warning  
14 that has been reviewed and approved in writing by the California Attorney General for use on  
15 thermoplastic-coated or PVC accessories:  
16

17 **"WARNING:** Handling this product will expose you to lead, a  
18 chemical known to the State of California to cause [cancer, and]  
19 birth defects or other reproductive harm. *Wash hands after*  
20 *handling*

21 The warning in California shall be given by having it affixed to the Identified Product itself or  
22 to the unit package of such Identified Product or, displayed on an internet site for those units of  
23 Identified Products sold on the internet to California consumers. The warning shall be  
24 contained in the same section of the label that contains other safety warnings, if any, concerning  
25 the use of the Identified Product or near its displayed price and/or UPC code. Such warning  
26 shall be prominently affixed to or printed on each such Identified Product, its label or package  
27 or invoice, and displayed with such conspicuousness as to render it likely to be read and  
28 understood by an ordinary individual under customary conditions of purchase or use.

1           **2.       Monetary Obligations**

2           2.1       Within three (3) business days of the Court's Order approving this  
3 Settlement, provided Plaintiff has provided the required tax information and forms, Wal-Mart  
4 shall pay TWENTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00) to  
5 Klamath Environmental Law Center ("Klamath") to be distributed as follows: (1) TWELVE  
6 THOUSAND FIVE HUNDRED (\$12,500.00) to be paid to Klamath for attorneys' fees and  
7 costs incurred by Klamath on behalf of Plaintiff in investigating this matter and negotiating this  
8 Stipulation for Settlement and Order Thereon on behalf of Plaintiff and the General Public, (2)  
9 TEN THOUSAND DOLLARS (\$10,000.00) to be distributed by Klamath at the direction of  
10 Plaintiff to one or more of the following non-profit organizations: Californians for Alternatives  
11 to Toxics; The Center for Ethics and Toxics, a project of the Tides Foundation; The Center on  
12 Race, Poverty and the Environment; The Ecological Rights Foundation; The Environmental  
13 Protection Information Center, The Golden Gate University School of Law Environmental  
14 Litigation Clinic; KPFA Radio; and Pacifica Reporters Against Censorship. Plaintiff and  
15 Klamath represent and warrant that each of the organizations identified in this paragraph is a tax  
16 exempt, Section 501(c)(3) non-profit corporation and that funds distributed to these  
17 organizations pursuant to this Stipulation for Settlement and Order Thereon may only be spent  
18 to reduce harm from toxic chemicals, or to increase consumer, worker and community  
19 awareness of health hazards posed by lead and other toxic chemicals.  
20

21           2.2       Except as otherwise provided in Paragraph 2.1, each party to this  
22 Stipulation for Settlement and Order Thereon shall bear its own costs and attorneys' fees  
23 incurred in connection with the Action and this Stipulation for Settlement.

24           **3.       Releases**

25           3.1       Except as to obligations created by this Stipulation for Settlement,  
26 Plaintiff, on behalf of itself, its parents, subsidiaries, affiliates, successors and predecessors in  
27

1 interest, and each of their respective members, officers, directors, employees, agents,  
2 representatives and attorneys, and the citizens of the State of California (the "Mateel  
3 Releasers") hereby forever waive and release all rights to institute or participate in, directly or  
4 indirectly, any form of legal action against Wal-Mart or its suppliers, and their respective  
5 parents, subsidiaries, affiliates, entities, successors and predecessors in interest, and each of  
6 their respective members, officers, directors, employees, agents, representatives and attorneys  
7 (collectively, the "Releasees"), based upon or otherwise related to the claims relating to the  
8 Covered Product which were brought or could have been brought in this action, and release all  
9 claims, liabilities, obligations, losses, costs, expenses, fines and damages against the Releasees,  
10 whether under Proposition 65 arising out of or relating to the allegations asserted in the 60-Day  
11 Notices, or the Complaint, or otherwise, relating to the Covered Product, including without  
12 limitation the disputed allegation that Wal-Mart failed to provide Proposition 65 warnings  
13 regarding exposure to lead in the Covered Product. Notwithstanding the above, the release of  
14 the suppliers of Wal-Mart is limited to claims related to the Covered Product sold by or through  
15 Wal-Mart or its parents, subsidiaries, affiliates, entities, successors and predecessors.

17 3.2 Wal-Mart waives its rights to institute legal action against Plaintiff, its  
18 officers, directors, attorneys, consultants and representatives for claims which were made or  
19 could have been made in this action, including claims based upon actions undertaken or  
20 statements made by Plaintiff in connection with its prosecution of the Action and its filing  
21 and/or service of the 60-Day Notices, and the Complaint.

22 3.3 As to Wal-Mart, Plaintiff hereby waives any and all rights and benefits  
23 which it now has, or in the future may have, conferred upon it by virtue of the provisions of  
24 Section 1542 of the California Civil Code, which provides as follows:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
26 **WHICH THE CREDITOR DOES NOT KNOW OR**  
27 **SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF**  
28 **EXECUTING THE RELEASE, WHICH IF KNOWN BY**



1           **5.     Retention of Jurisdiction**

2           5.1     This Court shall retain jurisdiction of this matter to implement the  
3 Stipulation of Settlement pursuant to Code of Civil Procedure §64.6.

4           **6.     Notices**

5           6.1     Whenever a notice is called for by this Stipulation for Settlement and  
6 Order Thereon, it shall be provided by U.S. Mail and facsimile to the Parties at the addresses  
7 and facsimile numbers identified herein. If any Party desires to change the individual, address  
8 or facsimile number designated herein, such Party shall provide notice of the change to all other  
9 Parties.

10                     Notice to Plaintiff, Mateel Environmental Justice Foundation: c/o William  
11 Verick, Esq., Klamath Environmental Law Center, 434 First Street, Eureka, CA 95501, (707)  
12 268-8901 (fax).

13                     Notice to Defendant, Wal Mart Stores, Inc.: c/o CT Corporation System,  
14 818 West Seventh St., Los Angeles, CA 90017, (213) 614-9347 (fax); with a copy to Wal-Mart  
15 Stores, Inc., Attn: Legal Dept., 702 Southwest 8th Street, Bentonville, Arkansas 72716-0215,  
16 (479) 277-5991 (fax).

17           **7.     Entire Agreement**

18           7.1     This Stipulation for Settlement and Order Thereon contains the sole and  
19 entire agreement and understanding of the Parties hereto with respect to the subject matter  
20 thereof, and any and all prior discussions, negotiations, commitments and understandings  
21 related hereto. No representation, oral or otherwise, express or implied, other than those  
22 contained herein, have been made by any Party hereto. No other agreements not specifically  
23 referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.  
24

1           **8.     Governing Law**

2           8.1     The validity, construction and performance of this Stipulation for  
3 Settlement and Order Thereon shall be governed by the laws of the State of California, without  
4 reference to any conflicts of law provisions under California law.

5           **9.     Judicial Approval**

6           9.1     The Parties acknowledge that, pursuant to Health & Safety Code Section  
7 25249.7, a noticed motion is required to obtain judicial approval of this Settlement. If this  
8 Stipulation for Settlement and Order Thereon is not approved and entered by the Court, or if the  
9 entry of this Stipulation for Settlement and Order Thereon is successfully challenged, this  
10 Stipulation of Settlement and Order Thereon shall be of no force or effect, cannot be used in any  
11 proceeding for any purpose.

12           **10.    Compliance With Reporting Requirements**

13           10.1    In accordance with the reporting form requirements referenced in  
14 Health & Safety Code Section 25249.7(f), counsel for Plaintiff shall submit to the California  
15 Attorney General's Office, notice of this settlement. In accordance with the regulations  
16 promulgated with respect to Proposition 65, counsel for Plaintiff represents that it will send a  
17 copy of this Agreement to the California Attorney General's Office (a) within five (5) days of  
18 its execution and no later than forty five (45) days prior to the hearing on the Motion for  
19 Approval with respect to this Stipulation for Settlement and Order Thereon.

20           **11.    Authorization**

21           11.1    The undersigned represent and warrant the he or she is authorized to  
22 execute this Stipulation on behalf of the respective parties for which they are signing and have  
23 read, understood and agree to all of the terms and conditions of this Agreement.  
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**12. No Admissions**

12.1 Neither this Agreement, nor the entry by the Court of Stipulation for Settlement and Order Thereon shall be construed as an admission by Wal-Mart of any fact, finding, issue of law or violation of law. Wal-Mart's compliance with this Stipulation for Settlement and Order Thereon shall not constitute or be construed as an admission by Wal-Mart of any fact, finding, conclusion, issue of law or violation of law.

**13. Severability**

13.1 In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

**14. Counterparts and Facsimile**

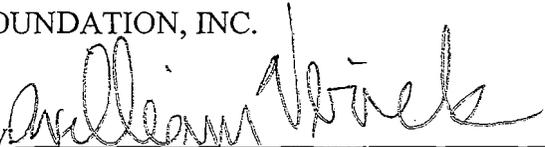
14.1 This Stipulation for Settlement and Order Thereon may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**15. No Other Products Known To Violate Proposition 65**

15.1 Plaintiff represents and warrants that it has no current knowledge or information based upon any investigation or otherwise that Releasees are currently manufacturing, distributing, or selling for retail sale in California any product(s) made out of PVC, other than the Covered Product, which Plaintiff believes are causing a violation of Proposition 65.

Dated: \_\_\_\_\_

MATEEL ENVIRONMENTAL LAW  
FOUNDATION, INC.

By:   
Its: CEO



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Dated: \_\_\_\_\_

WAL-MART, INC.

By: Kevin D'Arcangelo  
Its: VICE PRESIDENT

APPROVED AS TO FORM:

BARTKO, ZANKEL, TARRANT & MILLER  
A Professional Corporation

Dated: 8-14-07

By: Michael D. Abraham  
Michael D. Abraham  
Attorneys for Defendant  
WAL-MART, INC.

APPROVED AS TO FORM:

Dated: 8-14-07

By: David H. Williams  
David H. Williams  
Attorneys for Plaintiff  
MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

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Facsimile: (510) 271-0829  
9 email: davidhwilliams@earthlink.net  
brianacree@earthlink.net

10 Attorneys for Plaintiff  
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN FRANCISCO

17 MATEEL ENVIRONMENTAL JUSTICE  
18 FOUNDATION,

19 Plaintiff,

21 vs.

24 PAN OCEANIC EYEWEAR, LTD, et al.,

25 Defendants.  
26 \_\_\_\_\_/

ENDORSED  
FILED  
San Francisco County Superior Court

SEP 10 2007

GORDON PARK-LI, Clerk  
BY: AUDREY HUIE  
Deputy Clerk

CASE NO. 457611

*STIPULATED*  
[Proposed] ORDER  
APPROVING SETTLEMENT  
AS TO DEFENDANT  
WAL-MART STORES, INC.

Date: September 7, 2007  
Time: 9:30 a.m.  
Dept. No.: 301

1 Plaintiff's motion for approval of settlement and entry of Consent Judgment as to  
2 Defendant Wal-Mart Stores, Inc. was heard on regular noticed motion on September 7, 2007, at  
3 9:30 a.m. in Department No. 301. Having reviewed the pleadings and the moving papers, having  
4 reviewed the terms of the proposed consent judgment and having considered the arguments of  
5 counsel, the Court finds as follows:

6 1. The warnings the Consent Judgment requires comply with the requirements of  
7 Proposition 65.

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

10 3. The attorneys fees awarded under the Consent Judgment and the underlying  
11 hourly rates, time expended, and costs incurred are reasonable.

12  
13 IT IS SO ORDERED.

14 SEP 18 2007

15 Dated: \_\_\_\_\_

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**PETER J. BUSCH**  
\_\_\_\_\_  
Judge of the Superior Court