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MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

16
17 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Case No. 472189

18 Plaintiff,

19 V.

20 DUALIT, LTD., et al.

21 Defendants.

[PROPOSED] CONSENT JUDGMENT AS
TO RANCILLIO NORTH AMERICA, INC.
and RANCILLIO MACCHINE PER CAFFE
SPA

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24 1. INTRODUCTION

25 1.1 On or about October 17, 2007, plaintiff MATEEL ENVIRONMENTAL JUSTICE
26 FOUNDATION ("Mateel"), provided a 60-day notice of violation ("Notice") to the California
27 Attorney General, the District Attorneys of every county in California, the City Attorneys of

1 every California city with a population greater than 750,000, Rancilio North America, Inc. and
2 Rancilio Macchine Per Caffè SPA (collectively "Rancilio" or "Defendant"), alleging that
3 Defendant, through sales in California of espresso machines, was violating Health & Safety Code
4 section 25249.6. On June 26, 2008, Mateel provided a 60-day notice of violation ("Notice") to
5 the California Attorney General, the District Attorneys of every county in California, the City
6 Attorneys of every California city with a population greater than 750,000 and to Defendant
7 alleging that Defendant, through sales in California of espresso machines and coffee grinders
8 was violating Health & Safety Code section 25249.6.

9 1.2 On or about February 14, 2008, Plaintiff Mateel, acting in the public interest
10 pursuant to Health and Safety Code section 25249.7(d), filed a Complaint for Civil Penalties and
11 Injunctive Relief in San Francisco Superior Court, Case No. 472189 ("Complaint") against
12 Defendant based on the allegations contained in the Notice. Eighty-five days after June 26, 2008,
13 provided no public enforcer begins a Proposition 65 enforcement action that pertains to lead
14 exposures caused by Defendant's coffee grinders, the Complaint in this action shall be deemed to
15 be amended to include an enforcement action against Defendant with regard to Defendant's
16 coffee grinders. Collectively, Defendant's espresso machines and coffee grinders will be known,
17 for purposes of this Consent Judgment, as Covered Products.

18 1.3 For purposes of this Consent Judgment, the parties stipulate that this Court has
19 jurisdiction over the allegations of violations contained in the Complaint and personal
20 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
21 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a
22 full and final settlement and resolution of the allegations contained in the Complaint and of all
23 claims which were or could have been raised based on the facts alleged therein or arising
24 therefrom.

25 1.4 Mateel and Defendant enter into this Consent Judgment pursuant to a full and
26 final settlement of disputed claims between the parties for the purpose of avoiding prolonged
27 litigation. This Consent Judgment shall not constitute an admission with respect to any

1 allegation made in the Notice or the Complaint, each and every allegation of which Defendant
2 denies, nor may this Consent Judgment or compliance with it be used as evidence of any
3 wrongdoing, misconduct, culpability or liability on the part of Defendant.

4 2. INJUNCTIVE RELIEF-REFORMULATION

5 2.0 Injunctive Relief

6 _____2.1_____ Within ninety (90) days of the days of the date of entry of this Consent Judgment
7 (“Effective Date”), Defendant may not ship for sale in California any Espresso Machine Covered
8 Products unless Defendant either 1.) provides warnings in the manner specified in paragraph 2.2
9 below; or 2.) the Covered Products shipped for sale in California meet the Reformulation
10 Standard set forth in paragraphs 2.3 through 2.6 below.

11 2.2 Warnings Defendant may provide a warning affixed to the packaging or labeling
12 of each unit of the Covered Product. The warning shall state:

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

16 The text of this warning must be in 12 point type or larger. The word “WARNING” must be
17 capitalized and be in bold. The warning must either be on the front or top of the packaging of the
18 Covered Product. If after the Effective Date, Defendant ships Covered Products to a retailer or
19 distributor outside of California that neither provide the warnings specified in this paragraph nor
20 meet the Reformulation Standard specified in paragraphs 2.3 through 2.6 below (“Non-
21 Conforming Espresso Machine Covered Products”), and if the retailer or distributor then offers
22 those Non-Conforming Espresso Machine Covered Products for sale in California, then as to
23 those Non-Conforming Espresso Machine Covered Products, that retailer or distributor, and their
24 customers, are not released pursuant to Sections 6 and 7 below.

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

4 2.4 Defendant shall engage in the following program of testing espresso machines
5 (“Testing Program”), to determine whether warnings are required:

- 6 a) For all tests of all espresso machines, the Exposure Water to be used shall
7 be de-ionized water.
- 8 b) For those machines that are intended to be plumbed to an external water
9 source: pressurize the Exposure Water storage vessel to 50 ± 5.0 pounds
10 per square inch (“psi”) (350 ± 35 kPa) using nitrogen gas. Collect a 125
11 mL control sample from the distribution system. Then connect the
12 beverage unit to the Exposure Water storage vessel using only stainless
13 steel valves and fittings and polytetrafluoroethylene (PTFE) tubing.
- 14 c) While operating the beverage unit in accordance with manufacturer’s
15 instructions, purge the unit with a volume of Exposure Water equal to
16 between 1.0 and 1.5 times the total volumetric capacity of the unit, or the
17 volume of purge water recommended in the operator’s instructions for the
18 machine, whichever amount is less. If there are multiple beverage outlets
19 (e.g. dispensing spouts) ensure that approximately equal volumes of
20 Exposure Water are purged from each outlet. Discard the purged water.
- 21 d) With the Exposure Water in contact with all surfaces having contact with
22 beverages under normal idle operating conditions, maintain static
23 conditions for 24 ± 1 hour. Operate the equipment (including any heating
24 operations) as intended without dispensing any water. No ingredients or
25 product are to be added during the exposure period.
- 26 e) After step “d”, and while operating the espresso machine in accordance
27 with the manufacturer’s instructions, draw a 250 mL sample of Exposure
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1 Water from the dispensing spout or spouts of the machine. If there are
2 multiple beverage outlets (e.g. dispensing spouts) ensure that
3 approximately equal volumes of water are drawn from each outlet.
4 Sample should be dispensed into a clean PTFE or polyethylene container
5 with an air-tight lid containing HNO₃ as a preservative.

- 6 f) Repeat steps “d” and “e” two additional times such that there is a
7 composite volume comprised of 3 samples taken at 24 hour intervals.
- 8 g) Analyze each Exposure Water sample and the control sample for the
9 concentration of lead using equipment and a method of analysis which
10 establish a detection limit of five (5) micrograms of lead per liter (“5
11 µg/L”) or lower for each espresso machine tested.
- 12 h) Calculate the average lead concentrations of the three samples that were
13 analyzed pursuant to step “g” to determine the test results for the beverage
14 unit in question.
- 15 i) All espresso machines tested shall be randomly selected using any
16 generally accepted random sampling method such as International
17 Standards Organization 2589-1 (1989), any random method generally
18 accepted by the National Institute for Standards and Technology, or any
19 authoritative text on statistical sampling.
- 20 j) The lot, batch, or other group from which any model of espresso machines
21 tested are drawn must be representative of the entire population of articles
22 of the model of espresso machine in question manufactured in the calendar
23 year or since the date of the last test. In order to accomplish this,
24 Defendant must show that its manufacturing process for the particular
25 model of espresso machine in the Testing Program did not change during
26 the calendar year or since the last test. A manufacturing process change
27 will be deemed to have occurred if there is a material change in: the type
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1 of components that make up any alloys used in the plumbing of the model
2 of espresso machine, the suppliers of the components that make up the
3 components of the alloys, or any other factor that substantially affects lead
4 leaching test results on a model of espresso machine.

5 k) The number of espresso machines tested shall be at least six beverage units
6 for each model of espresso machine, and the mean of at least six tested
7 beverage units shall be calculated.

8 l) After the Effective Date, unless Defendant provides the warning specified
9 in paragraph 2.2 above, Defendant may not ship for sale in California any
10 model of espresso machine unless the mean of at least six tested beverage
11 units calculated according to subparagraph k), above, is $\leq 5 \mu\text{g/L}$.

12 2.5 As part of the Testing Program, Defendant shall maintain the following records,
13 or require by contract that any laboratory conducting testing shall maintain the following records
14 and will provide them to Plaintiff upon request:

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

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

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

25 2.7 Within ninety (90) days of the days of the date of entry of this Consent Judgment
26 (“Effective Date”), Defendant may not ship for sale in California any Coffee Grinder Covered
27 Products unless Defendant either 1.) provides warnings in the manner specified in paragraph 2.8

1 below; or 2.) the Covered Products shipped for sale in California meet the Reformulation
2 Standard set forth in paragraphs 2.9 below.

3 2.8 Warnings Defendant may provide a warning affixed to the packaging or labeling
4 of each unit of the Coffee Grinder Covered Product. The warning shall state:

5 **WARNING:** Consuming beverages that have been prepared from
6 coffee ground in this coffee grinder will expose you to lead, a
7 chemical known to the State of California to cause birth defects
8 and other reproductive harm.

9 The text of this warning must be in 12 point type or larger. The word “WARNING” must be
10 capitalized and be in bold. The warning must either be on the front or top of the packaging of the
11 Coffee Grinder Covered Product. If after the Effective Date, Defendant ships Coffee Grinder
12 Covered Products to a retailer or distributor outside of California that neither provide the
13 warnings specified in this paragraph nor meets the Reformulation Standard specified in
14 paragraphs 2.9 below (“Non-Conforming Coffee Grinder Covered Products”), and if the retailer
15 or distributor then offers those Non-Conforming Coffee Grinder Covered Products for sale in
16 California, then as to those Non-Conforming Coffee Grinder Covered Products, that retailer or
17 distributor, and their customers, are not released pursuant to Sections 6 and 7 below.

18 2.9. Reformulation Standard After the Effective Date, Defendant may ship models
19 of Coffee Grinder Covered Products for sale in California that do not bear the warning specified
20 in paragraph 2.8 above, provided the grinding jaws (not including any supports thereof) for the
21 Coffee Grinder do not contain more than 0.30% (3000 parts per million) lead.

22 3. MONETARY RELIEF

23 3.1 Within ten (10) days after entry of this Consent Judgment by the Court, the
24 Rancilio companies, collectively, shall pay twenty thousand dollars (\$20,000) to the Center on
25 Race, Poverty and the Environment, which is a California non-profit organization that advocates
26 for workers' and consumers' safety and for awareness and reduction of toxic exposures. In
27 addition, Defendant shall pay a civil penalty of \$15,000. This civil penalty shall be paid as
28 follows: Defendant shall make one check in the amount of \$11,250 payable to the “Office of

1 Environmental Health Hazard Assessment” Defendant shall make another check in the amount
2 of \$3,750 payable to the Mateel Environmental Justice Foundation (“Mateel”), which shall
3 represent Mateel’s share of civil penalties as provided in Cal Health & Safety Code
4 § 25192(a)(2). The foregoing settlement payments shall be mailed to the attention of William
5 Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501, who
6 shall provide them to the respective organizations within fifteen (15) days of receipt.

7 4. ATTORNEYS' FEES

8 4.1 Within ten (10) days after entry of this Consent Judgment, Rancilio shall pay
9 forty thousand dollars (\$40,000) to the Klamath Environmental Law Center to cover Plaintiff’s
10 attorneys' fees and costs. This payment shall be mailed to the attention of William Verick,
11 Klamath Environmental Law Center, 424 First Street, Eureka, California 95501.

12 4.2 Except as specifically provided in this Consent Judgment, Plaintiff and Defendant
13 shall bear their own costs and attorneys’ fees.

14 5. ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

15 5.1 The terms of this Consent Judgment are enforceable by and among the parties
16 hereto, by Defendant Rancilio with respect to the releases offered in this Consent Judgment, or,
17 with respect to the injunctive relief provided for herein, by the California Attorney General.

18 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

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

1 behalf of, Rancilio. Compliance by Rancilio with the terms of this Consent Judgment resolves
2 any issue, now and in the future, concerning compliance by Defendant Rancilio and/or its
3 affiliates, parent or subsidiary corporations, divisions, successors, officers, directors, assigns,
4 distributors, retailers, and/or customers with the requirements of Proposition 65 with respect to
5 lead contained in or otherwise associated with Covered Products.

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

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

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

20 Plaintiff understands and acknowledges that the significance and consequence of this waiver of
21 California Civil Code Section 1542 is that even if Plaintiff suffers future damages arising out of
22 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
23 Plaintiff will not be able to make any claim for those damages against Defendant Rancilio, or its
24 parents, subsidiaries or affiliates, or any of its customers, distributors, wholesalers, retailers or
25 any other person in the course of doing business who may manufacture, use, maintain, distribute,
26 market or sell the Covered Products. Furthermore, Plaintiff acknowledges that it intends these
27 consequences for any such claims which may exist as of the date of this release but which

1 Plaintiff does not know exist, and which, if known, would materially affect its decision to enter
2 into this Consent Judgment, regardless of whether its lack of knowledge is the result of
3 ignorance, oversight, error, negligence, or any other cause.

4 7. APPLICATION OF JUDGMENT

5 7.1 The obligations of this Consent Judgment shall apply to and be binding upon any
6 and all Plaintiffs, acting in the public interest pursuant to Health and Safety Code section
7 25249.7(d) and the successors or assigns of any of them.

8 8. MODIFICATION OF JUDGMENT

9 8.1 This Consent Judgment may be modified only upon written agreement of the
10 parties and Rancilio and upon entry of a modified Consent Judgment by the Court thereon, or
11 upon motion of any party as provided by law and upon entry of a modified Consent Judgment by
12 the Court.

13 9. NOTICE

14 9.1 When any Party is entitled to receive any notice or report under this Consent
15 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to:

16 (a) For Mateel: William Verick, Esq., Klamath Environmental Law Center,
17 424 First Street, Eureka, California 95501; and

18 (b) For: Rancilio: Ann Grimaldi, McKenna, Long & Aldridge, 101 California
19 Street, 41st Floor, San Francisco, CA 94111.

20 9.2 Any Party may modify the person and address to whom notice is to be sent by
21 sending each other Party notice in accordance with this Paragraph.

22 10. AUTHORITY TO STIPULATE

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

26 11. RETENTION OF JURISDICTION

27 11.1 This Court shall retain jurisdiction over the matters covered herein and the

1 enforcement and/or application of this Consent Judgment.

2 12. ENTIRE AGREEMENT

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

9 13. GOVERNING LAW

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

12 14. COURT APPROVAL

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

15 IT IS SO STIPULATED:

16 DATED: *AUGUST 5, 2008*

By: *Brian Reason*
Defendant Rancilio North America, Inc.

17
18 DATED:

By: *Roberto Rancilio*
Defendant Rancilio Macchine Per Caffè SpA

19
20 DATED:

William Verick
William Verick
Mateel Environmental Justice Foundation

21
22
23 IT IS SO ORDERED, ADJUDGED AND DECREED:

24
25 Dated:

JUDGE OF THE SUPERIOR COURT