

1 **KLAMATH ENVIRONMENTAL LAW**  
2 **CENTER**

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15 **Attorneys for Plaintiff**  
16 **Mateel Environmental Justice Foundation**

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF SAN FRANCISCO**

19 **MATEEL ENVIRONMENTAL JUSTICE**  
20 **FOUNDATION,,**

21 **Plaintiff,**

22 **v.**

23 **KOHL'S DEPARTMENT STORES, INC.,**

24 **Defendant.**

25 **) Case No. CGC 09-488864**

26 **) **CONSENT JUDGMENT****  
27 ****[PROPOSED]****

28 **1. INTRODUCTION**

29 **1.1 On May 29, 2009, the MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**  
30 **("MEJF" or "Plaintiff") acting on behalf of itself and the general public, filed a Complaint for**  
31 **civil penalties and injunctive relief ("Complaint") in San Francisco Superior Court, Case No.**  
32 **CGC 09-488864, against defendant KOHL'S DEPARTMENT STORES, INC. ("Kohl's" or**  
33 **"Defendant"). The Complaint alleges, among other things, that Defendant violated provisions of**  
34 **the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections**  
35 **25249.5, et seq. (Proposition 65) by failing to give clear and reasonable warnings to those**

1 residents of California who handle and use glass lamps and candle holders that contain lead that  
2 handling and use of these products causes those residents to be exposed to lead and/or lead  
3 compounds. Lead is known to the State of California to cause cancer and/or birth defects or other  
4 reproductive harm. The Complaint was based upon a 60-Day Notice letter dated December 18,  
5 2008, sent by MEJF to Defendant, the California Attorney General, all District Attorneys, and all  
6 City Attorneys with populations exceeding 750,000.

7 1.2 Defendant is a business that employs more than ten persons, and markets and sells  
8 glass lamps and candle holders that allegedly contain lead and/or lead compounds. Pursuant to  
9 Health and Safety Code Section 25249.8, lead and lead compounds are chemicals known to the  
10 State of California to cause cancer and reproductive toxicity. Plaintiff MEJF alleges that glass  
11 lamps and candle holders that contain lead that are sold by Defendant for use in California require  
12 a warning under Proposition 65, pursuant to Health and Safety Code Section 25249.6. Defendant  
13 denies that a warning is required.

14 1.3 For purposes of this Consent Judgment, the parties stipulate that this Court has  
15 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
16 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of San  
17 Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
18 and resolution of the allegations contained in the Complaint and of all claims which were or could  
19 have been raised by any person or entity based in whole or in part, directly or indirectly, on the  
20 facts alleged therein or arising therefrom or related to.

21 1.4 This Consent Judgment resolves claims that are denied and disputed. The parties  
22 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
23 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment  
24 shall not constitute an admission with respect to any material allegation of the Complaint, each  
25 and every allegation of which Defendant denies, nor may this Consent Judgment or compliance  
26 with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
27 Defendant.

1           1.5     For purposes of this Consent Judgment, the term "Covered Products" means glass  
2 lamps and candle holders marketed or sold by Kohl's that meet both of the following criteria: (a)  
3 Kohl's is the importer of record; and (b) the product is sold under a Kohl's Corporation private  
4 label.

5           1.6     The term "Effective Date" means 90 days after entry of this Consent Judgment.

6           1.7     The term "Accessible Component" means a metal component or solder that is  
7 accessible to a user through normal and reasonably foreseeable use and abuse of a Covered  
8 Product. A component part of a Covered Product is not an Accessible Component if it is not  
9 physically exposed by reason of a sealed covering or casing or does not become physically  
10 exposed through reasonably foreseeable use and abuse of the Covered Product.

11       **2.     SETTLEMENT PAYMENT**

12           2.1     In settlement of all of the claims that are alleged, or could have been alleged, in the  
13 Complaint concerning Covered Products, Defendant shall pay \$35,000 to the Klamath  
14 Environmental Law Center ("KELC"), which shall subsequently and within a commercially  
15 reasonable time be divided by KELC as follows: (i) \$20,000 shall be paid to KELC for attorneys'  
16 fees and costs incurred by KELC on behalf of Plaintiff in investigating this matter and negotiating  
17 this Consent Judgment, (ii) \$7,500 shall be distributed by KELC to the Ecological Rights  
18 Foundation and \$7,500 shall be distributed by KELC to Californians for Alternatives to Toxics  
19 for use toward reducing exposures to toxic chemicals and other pollutants, and toward increasing  
20 consumer, worker and community awareness of health hazards posed by lead and other toxic  
21 chemicals. The parties agree and acknowledge that the charitable contributions made pursuant to  
22 this section shall not be construed as a credit against the personal claims of absent third parties for  
23 restitution against Defendant. The above described payment shall be forwarded by Defendant so  
24 that it is received at least 5 days prior to the hearing date scheduled for approval of this Consent  
25 Judgment. If the Consent Judgment is not approved within 120 days of the date scheduled for  
26 approval, the above described payment shall be returned and the provisions of this Consent  
27 judgment shall become null and void.

28

1           2.2     Defendant shall not be required to pay a civil penalty pursuant to Health and  
2     Safety Code Section 25249.7(b).

3           **3.     ENTRY OF CONSENT JUDGMENT**

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

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

8           4.1     As to alleged exposures to lead or lead compounds from Covered Products, this  
9     Consent Judgment is a final and binding resolution between MEJF, acting on behalf of itself and  
10    (as to those matters raised in the 60-Day Notice Letters) the general public, and Defendant of: (i)  
11    any violation of Proposition 65 (including but not limited to the claims made in the Complaint);  
12    and (ii) any other statutory or common law claim to the fullest extent that any of the foregoing  
13    described in (i) or (ii) were or could have been asserted by any person or entity against Defendant  
14    or its parents, subsidiaries or affiliates, and all of their suppliers, customers, distributors,  
15    wholesalers, retailers, or any other person in the course of doing business, and the successors and  
16    assigns of any of them, who may use, maintain, distribute or sell Covered Products ("Released  
17    Entities"), based on exposure of persons to lead or lead compounds from Covered Products or  
18    failure to provide a clear and reasonable warning of exposure to such individuals; and (iii) as to  
19    alleged exposures to lead or lead compounds from Covered Products, any other claim based in  
20    whole or in part on the facts alleged in the Complaint, whether based on actions committed by the  
21    Released Entities or others. As to alleged exposures to lead or lead compounds from Covered  
22    Products, compliance with the terms of this Consent Judgment resolves any issue, now and in the  
23    future, concerning compliance by Defendant and the Released Entities, with the requirements of  
24    Proposition 65 with respect to Covered Products, and any alleged resulting exposure.

25          4.2     As to alleged exposures to lead or lead compounds from Covered Products, MEJF,  
26    by and on behalf of itself and its respective agents, successors and assigns, waives any and all  
27    rights to institute any form of legal action, and releases all claims against Defendant and the  
28    Released Entities, and all of their respective parents, subsidiaries or affiliates, and all of their

1 suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of  
2 doing business, and the successors and assigns of any of them, who may use, maintain, distribute  
3 or sell the Covered Products, whether, under Proposition 65 or otherwise, arising out of or  
4 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,  
5 including but not limited to any exposure to, or failure to warn with respect to, the Covered  
6 Products (referred to collectively in this paragraph as the "Claims"). In furtherance of the  
7 foregoing, as to alleged exposures to Covered Products, MEJF hereby waives any and all rights  
8 and benefits which it now has, or in the future may have, conferred upon it with respect to the  
9 Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as  
10 follows:

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

16 4.3 MEJF understands and acknowledges that the significance and consequence of this  
17 waiver of California Civil Code section 1542 is that even if MEJF suffers future damages arising  
18 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
19 Products, including but not limited to any exposure to, or failure to warn with respect to exposure  
20 to, lead or lead compounds from Covered Products, MEJF will not be able to make any claim for  
21 those damages against Defendant or the Released Entities. Furthermore, MEJF acknowledges  
22 that it intends these consequences for any such Claims as may exist as of the date of this release  
23 but which MEJF does not know exist, and which, if known, would materially affect their decision  
24 to enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of  
25 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 hereto. Subject to the requirements of Section 5.2, the Parties may, by noticed motion or order to

1 show cause before the Superior Court of San Francisco County, giving the notice required by law,  
2 enforce the terms and conditions contained herein.

3       **5.2 Notice and Cure/Meet and Confer.** At any time more than 30 days after the  
4 Effective Date, MEJF may provide Kohl's with a Notice of Violation, alleging that a Covered  
5 Product sold by Kohl's in California is alleged to contain lead in excess of an applicable  
6 reformulation standard in this Consent Judgment and/or does not comply with the applicable  
7 warning requirement in this Consent Judgment ("Noncompliant Covered Product").

8               **5.2.1** A Notice of Violation may be based on "swipe" testing which Mateel  
9 believes establishes that lead is present on the surface of the Noncompliant Covered Product. The  
10 Notice of Violation shall identify the Noncompliant Covered Product by name, description, SKU,  
11 UPC, and any other identifying information available to Mateel. MEJF shall provide with the  
12 Notice of Violation copies of all available purchase receipts, product tags, and labels, picture(s) of  
13 the Noncompliant Covered Product, and any test results showing lead level in excess of the  
14 applicable reformulation standard, if any.

15               **5.2.2** Within 15 business days of receiving such a request, Kohl's shall provide  
16 notice to MEJF of its election to contest or not to contest the Notice of Violation. If Kohl's elects  
17 not to contest the Notice of Violation, it shall, within 5 business days after providing its notice of  
18 election, either (a) stop sale of the Noncompliant Covered Product in California, or (b) provide  
19 with the Noncompliant Covered Product a warning that complies with Section 7.3 below. If  
20 Kohl's complies with this Section 5.2.2, it shall be deemed to be in compliance with this Consent  
21 Judgment, there shall be no further actions taken related to the Noncompliant Covered Product  
22 and the Notice of Violation, and Kohl's shall not be liable for any remedies, including injunctive  
23 relief, penalties, sanctions, monetary award, attorney's fees, or costs associated with the  
24 Noncompliant Covered Product or the Notice of Violation.

25               **5.2.3** In the event that Kohl's wishes to contest the allegations contained in any  
26 Notice of Violation, Kohl's may provide with its notice of election any evidence to MEJF that in  
27 Kohl's judgment supports its position. In the event that, upon a good faith review of the  
28 evidence, MEJF agrees with Kohl's position, it shall notify Kohl's and no further action shall be

1 taken. If MEJF disagrees with Kohl's position, it shall, within 30 days, notify Kohl's of such and  
2 provide Kohl's, in writing, with the reasons for its disagreement. Thereafter, the Parties shall  
3 meet and confer to attempt to resolve their dispute on mutually acceptable terms.

4 5.2.4 If either (a) there is no resolution of the meet and confer process required  
5 under Section 5.2.3 within 45 days, (b) Kohl's fails to provide written notice of its election to  
6 correct or contest the violations identified in a Notice of Violation within 15 days, or (c) Kohl's  
7 fails to correct any uncontested violations identified in a Notice of Violation within 30 days,  
8 MEJF may seek to enforce the terms and conditions contained in this Consent Judgment in the  
9 Superior Court of the State of California, County of San Francisco, or may initiate an  
10 enforcement action for new violations pursuant to Health and Safety Code § 25249.7(d).

11 5.3 As to any matters not covered by Section 5.2, a Party may enforce any of the terms  
12 and conditions of this Consent Judgment only after that Party first provides 30-days notice to the  
13 Party allegedly failing to comply with the terms and conditions of this Consent Judgment and  
14 attempts to resolve such Party's failure to comply in an open and good faith manner. In any such  
15 proceeding, the Party may seek whatever fines, costs, penalties or remedies as may be provided  
16 by law for any violation of Proposition 65 or this Consent Judgment.

## 17 **6. MODIFICATION OF JUDGMENT**

18 6.1 This Consent Judgment may be modified only upon written agreement of the  
19 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
20 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

21 6.2 If, with respect to Covered Products, the Attorney General of the State of  
22 California or Plaintiff permit any other reformulation standard by way of settlement or  
23 compromise with any other person in the course of doing business, or any other entity, or if  
24 another reformulation standard for Covered Products is incorporated by way of final judgment as  
25 to any other person in the course of doing business, or any other entity, then Defendant is entitled  
26 to seek a modification to this Consent Judgment on the same terms as provided in those  
27 settlements, compromises or judgments.

1     **7.     INJUNCTIVE RELIEF**

2             7.1     Covered Products that are manufactured after the Effective Date that are sold or  
3     offered for sale in California shall either comply with the reformulation standards of Section 7.2,  
4     or bear a warning as provided in Section 7.3.

5             7.2     Covered Products shall not require a warning if each Accessible Component used  
6     in the Covered Product has lead content by weight of less than 0.06% (600 parts per million “600  
7     ppm”), using a test method of sufficient sensitivity to establish a limit of quantification (as  
8     distinguished from detection) of less than 600 ppm. Defendant may comply with the  
9     reformulation requirements of this Section by relying on information obtained from the  
10    manufacturers and/or suppliers of Covered Products, and/or the suppliers of the materials utilized  
11    in their manufacture, so long as such reliance is in good faith.

12            7.3     Defendant shall provide a warning through product labeling or point-of-sale  
13    warning sign for each Covered Product that does not comply with the reformulation standard of  
14    Section 7.2. The labeling or point-of-sale warning sign shall contain one of the following  
15    warning statements:

16            “**WARNING:** This product contains lead, a chemical known to the State of  
17            California to cause birth defects and other reproductive harm. ***Wash hands after  
handling***” or

18            “**WARNING:** Handling the brass parts/solder of this product will expose you to  
19            lead, a chemical known to the State of California to cause birth defects and other  
20            reproductive harm. ***Wash hands after handling.***”

21            The word “**WARNING**” shall be in bold text, and the phrase “**Wash hands after handling**”  
22    shall be in bold italic text.

23            7.4     If product labeling is used, the warning statements described in Section 7.3 shall  
24    be affixed to or printed on the Covered Product itself or the Covered Product’s packaging or  
25    labeling.

26            7.5     If point-of-sale warning signs are used, a single sign shall be posted at each  
27    location where Covered Products are displayed. Warning signs posted at the point of display may  
28



1 be free-standing, placed on the wall, hung, or displayed in any manner, so long as they are  
2 reasonably likely to be seen by customers at or before the time of purchase.

3 **8. RETENTION OF JURISDICTION**

4 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
5 terms this Consent Judgment.

6 **9. AUTHORITY TO STIPULATE**

7 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
8 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
9 the party represented and legally to bind that party.

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 10.1 This Consent Judgment shall have no effect on Covered Products sold by  
12 Defendant outside the State of California.

13 **11. SERVICE ON THE ATTORNEY GENERAL**

14 11.1 KELC shall serve a copy of this Consent Judgment, signed by all parties, on the  
15 California Attorney General on behalf of the parties so that the Attorney General may review this  
16 Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45)  
17 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
18 and in the absence of any written objection by the Attorney General to the terms of this Consent  
19 Judgment, the parties may then submit it to the Court for approval.

20 **12. ENTIRE AGREEMENT**

21 12.1 This Consent Judgment contains the sole and entire agreement and understanding  
22 of the parties with respect to the entire subject matter hereof and any and all prior discussions,  
23 negotiations, commitments and understandings related hereto. No representations, oral or  
24 otherwise, express or implied, other than those contained herein have been made by any party  
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
26 deemed to exist or to bind any of the parties.

1   **13.   GOVERNING LAW**

2           13.1   The validity, construction and performance of this Consent Judgment shall be  
3   governed by the laws of the State of California, without reference to any conflicts of law  
4   provisions of California law.

5   **14.   EXECUTION AND COUNTERPARTS**

6           14.1   This Consent Judgment may be executed in counterparts and by means of  
7   facsimile, which taken together shall be deemed to constitute one document.

8   **15.   COURT APPROVAL**

9           15.1   If this Consent Judgment, in its entirety, is not approved by the Court, it shall be of  
10   no force or effect, and cannot be used in any proceeding for any purpose.

11   **16.   NOTICES**

12           16.1   Any notices under this Consent Judgment shall be by personal delivery of First  
13   Class Mail.

14                   If to MEJF:                   William Verick, Esq.  
15   Klamath Environmental Law Center  
16   424 First Street  
   Eureka, CA 95501

17                   If to Kohl's                   General Counsel  
18                   Corporation:               Kohl's Department Stores, Inc.  
   N56 W17000 Ridgewood Drive  
   Menomonee Falls, WI 53051

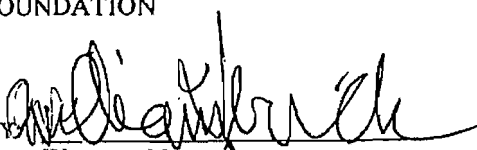
19   With a copy to:  
20   Jeffrey B. Margulies  
21   FULBRIGHT & JAWORSKI L.L.P.  
22   555 South Flower Street, 41st Floor  
23   Los Angeles, California 90071  
   Tel: (213) 892-9286/Fax: (213) 892-9494  
   jmargulies@fulbright.com

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IT IS SO STIPULATED:

DATED: 1/13/10


MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

BY:   
WILLIAM VERICK

DATED: December 2, 2009

KOHL'S DEPARTMENT STORES, INC.

BY: 

ITS: Senior Vice President Product Svcs  
Rev. 

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT