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26 **TYP RESTAURANT GROUP, INC.**

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MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION,

Plaintiff,

vs.

NOWHERE PARTNERS CORP. and TYP  
RESTAURANT GROUP, INC.

Defendants.

CASE NO. CGC-18-564892

CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1. On or about December 7, 2017, plaintiff MATEEL ENVIRONMENTAL  
3 JUSTICE FOUNDATION ("**Mateel**"), provided a 60-day notice of violation ("**Notice**") to the  
4 California Attorney General, the District Attorneys of San Francisco County, the City Attorneys  
5 of San Francisco, every California city with a population greater than 750,000, and defendant  
6 TYP Restaurant Group, Inc. ("**TYP**" or "**Defendant**"), alleging that Defendant, through sales in  
7 California of draft kombucha, was violating Health & Safety Code section 25249.6.

8 1.2. On March 8, 2018, plaintiff Mateel, acting in the public interest pursuant to  
9 Health and Safety Code section 25249.7(d), filed a Complaint for Civil Penalties and Injunctive  
10 Relief in San Francisco County Superior Court, Case No. 564892 ("**Complaint**") against  
11 Defendant based on the allegations contained in the Notice.

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

23 1.4. TYP is a business that employs more than ten people. TYP sells in the State of  
24 California kombucha that is stored and dispensed from Kombucha Dispensing Equipment.  
25 Mateel alleges that during a time period pertinent to this enforcement action, the Kombucha  
26 Dispensing Equipment at certain retail locations utilized parts, the surfaces of which contained  
27 Pb, and these parts contacted the kombucha that flowed through this equipment.

1           1.5 Pursuant to Health & Saf. Code § 25249.9, Pb are chemicals known to the State  
2 of California to cause cancer and reproductive toxicity. Under certain circumstances, products  
3 containing Pb that are sold or distributed in California are subject to Proposition 65's warning  
4 requirement. Mateel alleges that the draft kombucha TYP sold at certain retail locations, when  
5 served via Kombucha Dispensing Equipment with food contact surfaces that contain Pb,  
6 requires a Proposition 65 warning.

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


18           1.7 This consent judgment resolves all claims in the Notice and complaint to the  
19 extent those claims pertain to Pb exposures caused by kombucha. TYP denies and disputes all  
20 allegations made in the Notice and in the complaint, including without limitation, those  
21 outlined above. This Consent Judgment shall not constitute an admission with respect to any  
22 allegation made in the Notice or the complaint, nor may this Consent Judgment or compliance  
23 with it be used as an admission or evidence of any fact, wrongdoing, misconduct, culpability,  
24 violation of law or liability on the part of TYP or any person or entity released herein.

25 **2. INJUNCTIVE RELIEF**

26           2.1 No later than 180 days after the Effective Date, and as to all TYP stores in  
27 California, any in-store Kombucha Dispensing Equipment shall have no food contact surfaces  
28 that contain lead, such as lead containing brass or lead containing PVC plastic.

1           2.2     No later than 180 days after the Effective Date, as to all TYP stores in  
2 California, in-store kombucha shall contain Pb at a concentration no greater than 1 microgram  
3 of Pb per liter of kombucha. TYP meets the requirements of this sub-paragraph if  
4 commercially available analysis of in-store kombucha does not detect Pb when using a method  
5 of analysis that is able to resolve Pb in kombucha at a concentration of 1 microgram per liter or  
6 less.

7           2.3     In the event TYP satisfies the provisions of subsections 2.1 and 2.2 of this  
8 Section 2, draft kombucha may be sold without any warning concerning the presence of  
9 chemicals that cause cancer, birth defects and other reproductive harm. In the event TYP does  
10 not satisfy the provisions of subsections 2.1 and 2.2 of this Section 2 no later than 180 days  
11 after the Effective Date, TYP agrees to post Proposition 65 Warnings (“Proposition 65  
12 Warning”) at its stores that do not satisfy the provisions of subsections 2.1 and 2.2 of this  
13 Section 2, no later than 180 days after the Effective Date. The following Proposition 65  
14 Warning should be utilized:

15                    **WARNING:** Foods or beverages sold or served here can  
16                   expose you to chemicals including lead, which is known to the  
17                   state of California to cause cancer, birth defects or other  
18                   reproductive harm. For more information, go to:  
19                   [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

20           The Proposition 65 Warning can be provided using one or more of the following methods:

- 21           (1) An 8 1/2 by 11 inch sign, printed in no smaller than 28-point type placed so that it is  
22           readable and conspicuous to customers as they enter each public entrance to the  
23           restaurant or facility where food or beverages may be consumed, no lower than 4 feet  
24           nor higher than 6 feet above the ground.
- 25           (2) A notice or sign no smaller than 5 by 5 inches, printed in no smaller than 20-point  
26           type placed at each point of sale so as to assure that it is readable and conspicuous at the  
27           point of purchase.
- 28           (3) A warning on all menus or lists describing food or non-alcoholic beverage offerings

1 that include kombucha, in a type size no smaller than the largest type size used for the  
2 names of general menu items.

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 this Consent Judgment, the Parties waive their respective rights to a hearing or  
6 trial on the allegation made in the Complaint.

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

8 4.1 **Mateel's Release on Behalf of the Public Interest.** As to all exposures to Pb  
9 alleged in the Notice to be caused by kombucha, this Consent Judgment provides a full release  
10 of liability of TYP and its past, present and future employees, representatives, officers,  
11 directors, shareholders, attorneys, accountants, insurers, receivers, advisors, consultants,  
12 partners, third-party vendors, partnerships, members, parents, divisions, subsidiaries, affiliates,  
13 assigns, agents, independent contractors, successors, heirs, predecessors in interest, joint  
14 ventures, commonly-controlled corporations, , holding companies, controlling entities, and  
15 related or affiliated companies, subsidiaries, predecessors, successors and assigns to any of  
16 them (hereinafter collectively referred to as "**Released Parties**") on behalf of the Public  
17 Interest for all claims that were or could have been brought up to 180 days after the Effective  
18 Date (which shall be the date the court enters this Consent Judgment). As to all exposures to  
19 Pb alleged in the Notice to be caused by kombucha that is in the stream of commerce as of the  
20 Effective Date, this Consent Judgment also provides a full release of liability of TYP and the  
21 Released Parties on behalf of the Public Interest for all claims that were or could have been  
22 brought up to 180 days after the Effective Date. Notwithstanding any other provision of this  
23 Consent Judgment, no claim or matter is released on behalf of the public interest unless that  
24 claim or matter was raised in the Notice.

25 4.2 **Mateel's Release on Behalf of Itself.** As to all exposures to Pb alleged in the  
26 Notice, Mateel, acting in its individual capacity only and not in its representative capacity,  
27 waives all rights to institute any form of legal action and releases any and all claims against  
28 TYP and the Released Parties, which were or could have been brought up to 180 days after the

1 Effective Date. As to kombucha that is in the stream of commerce up to 180 days after the  
2 Effective Date, on behalf of Mateel in its individual capacity, this Consent Judgment also  
3 provides a full release of liability to TYP and the Released Parties for all claims that were or  
4 could have been brought up to 180 days after the Effective Date. In furtherance of the  
5 foregoing, Mateel, acting on behalf of itself, hereby waives any and all rights and benefits  
6 which it now has, or in the future may have, conferred upon it with respect to Pb exposures  
7 alleged to be caused by kombucha by virtue of the provisions of Section 1542 of the California  
8 Civil Code, and under any and all other statutes or common law principles of similar effect as  
9 now worded and as they may from time to time hereafter be amended.

10 Section 1542 of the California Civil Code presently provides as follows:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
12 **THAT THE CREDITOR OR RELEASING PARTY DOES**  
13 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
14 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**  
15 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
16 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
17 **WITH THE DEBTOR OR RELEASED PARTY.**

18 Mateel understands and acknowledges that the consequence of this waiver of California  
19 Civil Code Section 1542 is that even if Mateel has future claims arising out of or resulting  
20 from, or related directly or indirectly to, in whole or in part, kombucha, it will not be able to  
21 pursue that claim against TYP, nor may it pursue such a claim against any and all entities  
22 related to TYP including, but not limited to, the Released Parties . Furthermore, Mateel  
23 acknowledges that it intends these consequences for any such claims which may exist as of the  
24 date of this release but which Mateel does not know exist, and which, if known, would  
25 materially affect its decision to enter into this Consent Judgment, regardless of whether its lack  
26 of knowledge is the result of ignorance, oversight, error, negligence or any other cause. Mateel  
27 does not release any entity that supplies TYP with kombucha for sale in California.

1 Mateel acknowledges that it may hereafter discover facts different from, or in addition  
2 to, those which it now believes to be true with respect to the released claims. Mateel expressly  
3 assumes the risk of the facts turning out to be so different and agrees that the foregoing release  
4 and waiver shall be and remain effective in all respects and not subject to termination or  
5 recession notwithstanding such different or additional facts or discovery thereof, and that this  
6 Consent Judgement contemplates the extinguishment of all such released claims.

7 Mateel agrees not to sue or file a charge, complaint, grievance, demand for arbitration,  
8 or other proceeding against any of any of TYP or the Released Parties in connection with the  
9 released claims in any forum or assist or otherwise participate willingly or voluntarily in any  
10 claim, arbitration, suit, action, investigation or other proceeding of any kind which relates to  
11 any matter that involves the released claims, unless required to do so by court order, subpoena  
12 or other directive by a court, administrative agency, arbitration panel or legislative body, or  
13 unless required to enforce this Consent Judgement. To the extent any such claim, arbitration,  
14 suit, action, investigation or other proceeding may be brought by a third party, Mateel expressly  
15 waives any claim to any form of monetary or other damages, or any other form of recovery or  
16 relief in connection therewith, except for statutorily required witness fees.

17 Mateel acknowledges and agrees that it has not heretofore voluntarily, by operation of  
18 law, or otherwise assigned, transferred or granted or purported to assign, transfer or grant any  
19 claims, matters, demands or causes of action herein released, disclaimed, discharged or  
20 terminated and agrees to defend, indemnify and hold TYP and the Released Parties harmless  
21 from and against any and all costs, expenses, losses or liability incurred as a consequence of  
22 any such assignment.

23 **5. SETTLEMENT PAYMENT**

24 5.1 In settlement of all the claims pertaining to Pb exposures alleged to have been  
25 caused by kombucha, TYP shall pay a total amount of \$50,000, which shall be allocated as  
26 follows: \$2,000 shall be paid as a civil penalty; \$48,000 shall be paid to the Klamath  
27 Environmental Law Center (“KELC”) to cover a portion of Mateel’s attorneys fees and  
28 litigation costs. The above-referenced \$2,000 civil penalty shall be divided according to statute

1 with 75%, or \$1,500, made payable to California’s Office of Environmental Health Hazard  
2 Assessment (“OEHHA”) and 25%, or \$500, made payable to the Mateel Environmental Justice  
3 Foundation. If the Consent Judgment is entered by the court, within ten (10) days of TYP’s  
4 receipt of notice of the Court’s approval of the Consent Judgment, TYP’s counsel shall ensure  
5 the above described payments are delivered via UPS or FedEx for next business day delivery,  
6 or by wire transfer, to Klamath Environmental Law Center, 1125 Sixteenth Street, Suite 204,  
7 Arcata, California 95521. If this Consent Judgment is not entered by the court within 120 days,  
8 of the date scheduled for approval, the provisions of this Consent Judgment shall be null and  
9 void. Wire transfer instructions to Klamath Environmental Law Center will be transmitted to  
10 TYP’s counsel within 5 days of the parties’ full execution of this Consent Judgment.

11 **6. ENFORCEMENT OF JUDGMENT**

12 6.1 The terms of this Consent Judgment shall be enforced exclusively to the Parties  
13 hereto.

14 **7. MODIFICATION OF JUDGMENT**

15 7.1 This Consent Judgment may be modified only upon entry of a modified Consent  
16 Judgment by the court. Any party may seek such modification by noticed motion, with notice  
17 provided to both the other party and to the Attorney General.

18 7.2 Mateel agrees not to contest a TYP motion to modify this Consent Judgment in  
19 the event TYP has sought, and obtained, written consent from the Attorney General to such  
20 modification. Mateel also agrees not to contest a TYP motion to conform this Consent  
21 Judgment to any “safe use determination” established by OEEHA, pursuant to 27 Cal. Code  
22 Regs. § 25204 or any successor regulation, regarding Pb content of Kombucha Dispensing  
23 Equipment.

24 **8. NOTICE**

25 8.1 When any party is entitled to receive any notice or report under this Consent  
26 Judgment, the notice or report shall be made in writing and sent via U.S. Mail or other manner  
27 of overnight delivery to the following:  
28



1 8.1.1 For Mateel:

2 William Verick  
3 Klamath Environmental Law Center,  
4 1125 Sixteenth Street, Suite 204,  
5 Arcata, CA 95521

6 8.1.2 For TYP:

7 T.Y.P. Restaurant Group, Inc. d/b/a Tender Greens  
8 1201 West 5th Street, Suite T-400  
9 Los Angeles, California 90017  
10 Attn: David Dressler

11 With copies to, which shall NOT constitute notice to:

12 Hany S. Fangary  
13 Fangary Law Group  
14 633 West Fifth Street, Suite 5710  
15 Los Angeles, CA 90071; and

16 Justin M. Gaynor, Esq.  
17 Gaynor Page LLP  
18 800 Wilshire Blvd., Suite 1510  
19 Los Angeles, CA 90017

20 9. **AUTHORITY TO STIPULATE**

21 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
22 by the Party he or she represents to enter this Consent Judgment and to execute it on behalf of  
23 the Party represented and legally to bind that party.

24 10. **RETENTION OF JURISDICTION**

25 10.1 This court shall retain jurisdiction to implement this Consent Judgment.

26 11. **ENTIRE AGREEMENT**

27 11.1 This Consent Judgment contains the sole and entire agreement and understanding  
28 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,  
negotiations, commitments and understandings related hereto. No representations, oral or  
otherwise, express or implied, other than those contained herein have been made by any party

1 hereto. No other agreements not specifically referred to herein, oral or other wise, shall be  
2 deemed to exist or bind any of the parties.

3 **12. GOVERNING LAW**

4 12.1 The validity, construction and performance of this consent judgment shall be  
5 governed by the laws of the State of California, without reference to any conflicts or law  
6 provisions of California law.

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

8 13.1 Mateel agrees to comply with Health & Safety Code § 25249.7's reporting and  
9 approval requirements and as implemented by various regulations.

10 **14. EXECUTION IN COUNTERPART**

11 14.1 This Consent Judgment may be executed in counterparts and/or by facsimile,  
12 .pdf or other electronic signature, which taken together shall be deemed to constitute one  
13 original document.

14 **15. COURT APPROVAL**

15 15.1. If this Consent Judgment is not approved by the court, it shall be of no force or  
16 effect, and cannot be used in any proceeding for any purpose.

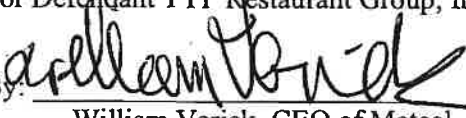
17  
18 **IT IS SO STIPULATED:**

19 Dated: 7/31/19

By:   
David Dressler

For Defendant TYP Restaurant Group, Inc.

21  
22 Dated: 7-31-19

By:   
William Verick, CEO of Mateel  
Environmental Justice Foundation

23  
24  
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26  
27 Dated: \_\_\_\_\_

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