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15 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

18 MATEEL ENVIRONMENTAL JUSTICE
19 FOUNDATION,

20 Plaintiff,

21 vs.

22 ALFRED, INC.,

23 Defendant.

24 CASE NO. 19STCV17117

25 CASE NO. 19STCV41660

26 [PROPOSED]

27 CONSENT JUDGMENT

28 MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Plaintiff,

vs.

MELROSE PLACE COFFEE COMPANY

Defendant.

1
2 1.INTRODUCTION

3 1.1. On or about June 28, 2018, plaintiff MATEEL ENVIRONMENTAL JUSTICE
4 FOUNDATION (“Mateel”), provided a 60-day notice of violation (“Notice”) to the California
5 Attorney General. A substantively identical letter was sent to the District Attorney of Los
6 Angeles County as well as to district attorneys for each of California’s 58 counties and the city
7 attorneys for every California city with a population greater than 750,000, and to Alfred, Inc.,
8 and Melrose Place Coffee Company (“Defendants”), alleging that Defendants, through sales in
9 California of draft kombucha, were violating the California Safe Drinking Water and Toxic
10 Enforcement at, also known as “Proposition 65,” codified at Health and Safety Code § 25249.5
11 *et seq.*

12 1.2. On May 16, 2019, plaintiff Mateel, acting on behalf of the public interest pursuant
13 to Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive
14 Relief in Los Angeles County Superior Court, Case No. 19STCV17117 (“Alfred Complaint”)
15 against Defendant Alfred Inc., based on the allegations contained in the Notice. On November
16 19, 2019, plaintiff Mateel, acting on behalf of the public interest pursuant to Health and Safety
17 Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief in Los Angeles
18 County Superior Court, Case No. 19STCV41660 (“Melrose Complaint”) against Defendant
19 Melrose Place Coffee Company, based on the allegations contained in the Notice. The Alfred
20 Complaint and the Melrose Complaint are referred to collectively as Complaints. Mateel and
21 Defendants (collectively, the “Parties”) agree and the court hereby orders that for purposes of
22 this settlement and entry of this Consent Judgment, these two actions are hereby consolidated.

23 1.3. This case involves claims of exposures to lead and lead compounds (hereafter
24 “Pb”) that Mateel alleges are caused by draft kombucha (as used herein, “draft kombucha”
25 means kombucha served from Kombucha Dispensing Equipment) sold at stores Defendants own,
26 operate, or promote in California. For purposes of this Consent Judgment, the equipment used to

1 store and serve draft kombucha, including the casks, taps, valves, lines and fittings, shall be
2 referred to as “Kombucha Dispensing Equipment.” Mateel’s complaints allege that the
3 equipment used to dispense draft kombucha—what are commonly referred to as “taps” of the
4 sort that taverns use to dispense draft beer—have valves and fittings made from leaded brass.
5 Draft kombucha, when served through this equipment, makes contact with this leaded brass and
6 causes Pb to leach into the kombucha. As a remedy, Mateel sought either to have Defendants
7 reformulate the equipment used to dispense draft kombucha or to provide a clear and reasonable
8 warning within the meaning of Health and Safety Code § 25249.6.

9 1.4. Mateel alleges that Defendants employ more than ten people. Mateel alleges that
10 Defendants sell or otherwise market in the State of California kombucha dispensed from
11 Kombucha Dispensing Equipment. During the time period pertinent to this enforcement action,
12 the Kombucha Dispensing Equipment used certain parts, the surfaces of which were alleged to
13 contain Pb, and these parts regularly contacted the kombucha that flowed through this
14 equipment.

15 1.5 Pursuant to Health and Safety Code § 25249.8, Pb is a chemical known to the
16 State of California to cause cancer and reproductive toxicity. Under certain circumstances,
17 products containing Pb that are sold or distributed in California are subject to Proposition 65’s
18 warning requirement. Mateel alleges that the draft kombucha Defendants market or sell, when
19 served via Kombucha Dispensing Equipment with food contact surfaces that contain Pb, requires
20 a Proposition 65 warning.

21 1.6 For purposes of this Consent Judgment only, and without waiving any arguments
22 to the contrary that it might assert in any other matter, Defendants agree not to contest the court’s
23 jurisdiction over the allegations of violations contained in the Notice and the Complaints, and
24 over Defendants, and to enter and enforce the provisions of this Consent Judgment as a full and
25 final settlement and resolution of the allegations made against Defendants contained in the
26 Notice or arising therefrom, to the extent those allegations pertain to lead exposures caused by
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1 kombucha. For purposes of this Consent Judgment only, Defendants agree that venue is proper
2 in the City and County of Los Angeles. All Parties to this agreement stipulate to the court’s
3 jurisdiction to enter and enforce the provisions of this Consent Judgment as a full and final
4 settlement and resolution of the allegations made against, or that could have been made against,
5 Defendants and their affiliated stores to the extent those allegations pertain to lead exposures
6 caused by kombucha.

7 1.7 This Consent Judgment resolves all claims in the Notice and Complaints to the
8 full extent those claims pertain to alleged lead exposures caused by kombucha served via
9 Kombucha Dispensing Equipment. Defendants deny and dispute all allegations made in the
10 Notice and in the Complaints. This Consent Judgment shall not constitute an admission with
11 respect to any allegation made in the Notice, nor may this Consent Judgment or compliance with
12 it be used as an admission or evidence of any fact, wrongdoing, misconduct, culpability,
13 violation of law or liability on the part of Defendants or any person or entity released herein in
14 any other lawsuit or legal proceeding.

15 2. INJUNCTIVE RELIEF

16 2.1 No later than 90 days after the Effective Date (which shall be the date that the
17 Court enters this Consent Judgment), and continuing thereafter, as to all of Defendants’ affiliated
18 stores in California, draft kombucha shall: (a) be Reformulated Products pursuant to § 2.2 below;
19 or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4 below.
20 For purposes of this consent judgment and settlement, a “Reformulated Product” is draft
21 kombucha sold at Defendants’ affiliated stores in California that is in compliance with the
22 standard(s) set forth in § 2.2 below. The warning requirement set forth in §§ 2.3 and 2.4 shall not
23 apply to any Reformulated Product.

24 2.2 “Reformulated Products” shall contain Pb at a concentration no greater than one
25 (1) microgram of Pb per liter of kombucha. Defendants meet the requirements of this sub-
26 paragraph if a commercially-available analysis of draft kombucha performed during the prior
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1 twelve (12) month period demonstrates compliance with the one (1) microgram or less of Pb per
2 liter level, when using a method of analysis that is able to detect and quantify Pb in kombucha at
3 a concentration of one (1) microgram per liter or less.

4 2.3 A clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must
5 be provided for all draft kombucha sold at Defendants’ affiliated stores in California that is not a
6 Reformulated Product. The warning shall consist of either the Warning or Alternative Warning
7 described in §§ 2.3(a) or (b), respectively.

8 (a) **Warning.** The “Warning” shall consist of the statement:

9
10 “**WARNING:** Certain foods and beverages sold or served here can expose you to
11 chemicals including lead in kombucha on tap, which is known to the State of California
12 to cause cancer and birth defects or other reproductive harm. For more information go to
13 www.P65Warnings.ca.gov/restaurant.”

14 (b) **Alternative Warning:** Defendants may, but are not required to, use the
15 alternative warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

16 “**WARNING:** Certain foods and beverages sold or served here can expose you to
17 chemicals including lead in kombucha on tap and acrylamide in many fried or baked
18 foods, which are known to the State of California to cause cancer and birth defects or
19 other reproductive harm. For more information go to
20 www.P65Warnings.ca.gov/restaurant.”

21 2.4 A Warning or Alternative Warning provided pursuant to § 2.3 must print
22 the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The Warning
23 or Alternative Warning shall be provided by one of the methods described in Cal. Code Regs. tit.
24 27, § 25607.5. Nothing in this consent judgment shall preclude Defendants from employing
25 more than one of the warning methods described in Cal. Code Regs. tit. 27, § 25607.5, nor shall
26 anything in this consent judgment require that Defendants employ more than one such method.

1 3. ENTRY OF CONSENT JUDGMENT

2 3.1 The Parties hereby request that the court promptly enter this Consent Judgment.
3 Upon entry of this Consent Judgment, the Parties waive their respective rights to a hearing or
4 trial on the allegation made in the Complaints.

5 4. MATTERS COVERED BY THIS CONSENT JUDGMENT

6 4.1 Mateel's Release on Behalf of the Public Interest. As to all exposures to Pb
7 alleged in the Notice to be caused by draft kombucha sold at Defendants' affiliated stores in
8 California, this Consent Judgment provides a full release of liability on behalf of the Public
9 Interest for all claims that were or could have been brought up through the Effective Date. As to
10 all exposures to Pb alleged in the Notice to be caused by draft kombucha sold at Defendants'
11 affiliated stores in California that is in the stream of commerce as of the Effective Date, this
12 Consent Judgment also provides a full release of liability on behalf of the Public Interest to
13 Defendants and their past, present and future parents, holding companies, controlling entities,
14 joint ventures or other investment vehicles, related companies, affiliates (as such term is defined
15 under Rule 405 of the Securities Act of 1933, as amended, and including without limitation any
16 and all affiliated companies and subsidiaries), predecessors, successors, and assigns to any of
17 them, as well as all past, present and future partners, principals, directors, officers, equity
18 holders, members, managers, agents, attorneys, employees and representatives of any of the
19 foregoing, for all claims that were or could have been brought up through the Effective
20 Date. Notwithstanding any other provision of this Consent Judgment, only claims related to
21 kombucha are released on behalf of the public interest consistent with the Notices.

22 4.2 Mateel's Release on Behalf of Itself. As to kombucha, Mateel, acting in its
23 individual capacity only and not in its representative capacity, waives all rights to institute any
24 form of legal action and releases all claims which were or could have been brought up through
25 the Effective Date. As to kombucha that is in the stream of commerce as of the Effective Date,
26 on behalf of Mateel in its individual capacity, this Consent Judgment also provides a full release

1 of liability to Defendants and their past, present and future parents, holding companies,
2 controlling entities, joint ventures or other investment vehicles, related companies, affiliates (as
3 such term is defined under Rule 405 of the Securities Act of 1933, as amended, and including
4 without limitation any and all affiliated companies and subsidiaries), predecessors, successors,
5 and assigns to any of them, as well as all past, present and future partners, principals, directors,
6 officers, equity holders, members, managers, agents, attorneys, employees and representatives of
7 any of the foregoing, for all claims that were or could have been brought up through the
8 Effective Date. In furtherance of the foregoing, Mateel, acting on behalf of itself, hereby waives
9 any and all rights and benefits which it now has, or in the future may have, conferred upon it
10 with respect to Pb exposures alleged to be caused by kombucha by virtue of the provisions of
11 Section 1542 of the California Civil Code, which provides as follows:

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

18 Mateel understands and acknowledges that the significance and consequence of this waiver of
19 California Civil Code § 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 Defendants or the released stores, nor may it pursue such a claim
22 against any and all entities related to Defendants including, but not limited to, their past, present
23 and future parents, holding companies, controlling entities, joint ventures or other investment
24 vehicles, related companies, affiliates (as such term is defined under Rule 405 of the Securities
25 Act of 1933, as amended, and including without limitation any and all affiliated companies and
26 subsidiaries), predecessors, successors, and assigns to any of them, as well as all past, present
27 and future partners, principals, directors, officers, equity holders, members, managers, agents,
28 attorneys, employees and representatives of any of the foregoing. Furthermore, Mateel

1 acknowledges that it intends these consequences for any such claims which may exist as of the
2 date of this release but which Mateel does not know exist, and which, if known, would materially
3 affect its decision to enter into this Consent Judgment, regardless of whether its lack of
4 knowledge is the result of ignorance, oversight, error, negligence or any other cause.

5 4.3 Notwithstanding any other provision of this Consent Judgment, Mateel (on behalf
6 of the public interest and itself) does not release any entity that supplies Defendants with
7 kombucha intended to be served from Kombucha Dispensing Equipment for sale in California,
8 nor does Mateel (on behalf of itself or the public interest) release any entity that supplies
9 Defendants with Kombucha Dispensing Equipment.

10 5. SETTLEMENT PAYMENT

11 5.1 In settlement of all the claims pertaining to Pb exposures alleged to have been
12 caused by draft kombucha, Defendants shall pay a total amount of \$45,000, which shall be
13 allocated as follows: \$2,000 shall be paid as a civil penalty; \$43,000 shall be paid to the Klamath
14 Environmental Law Center (“KELC”) to cover a portion of Mateel’s attorneys fees and litigation
15 costs. The above-referenced \$2,000 civil penalty shall be further allocated as follows: \$1,500
16 shall be made payable to California’s Office of Environmental Health Hazard Assessment
17 (“OEHHA”), and \$500 shall be made payable to the Mateel Environmental Justice Foundation as
18 Mateel’s statutorily authorized share of the above-referenced civil penalty amount. In the event
19 the Court approves the settlement in this case and enters this [Proposed] Consent Judgment, the
20 above-referenced payments shall be delivered no later than fourteen days after the court enters
21 this [Proposed] Consent Judgment. The above-referenced payments shall be delivered via
22 overnight mail or delivery service to Klamath Environmental Law Center, 1125 Sixteenth Street,
23 Suite 204, Arcata, California 95521. If this Consent Judgment is not entered by the court within
24 120 days, the provisions of this Consent Judgment shall be null and void.

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1 7. MODIFICATION OF JUDGMENT

2 7.1 This Consent Judgment may be modified only upon entry of a modified Consent
3 Judgment by the court. Any party may seek such modification by noticed motion, with notice
4 provided to both the other party and to the Attorney General.

5 7.2 Mateel agrees not to contest a motion to modify this Consent Judgment by a
6 Defendant in the event the Defendant has sought, and obtained, written consent from the
7 Attorney General to such modification. Mateel also agrees not to contest a motion by a
8 Defendant to conform this Consent Judgment to any “safe use determination” established by
9 OEEHA, pursuant to 27 Cal. Code Regs. § 25204 or any successor regulation, regarding Pb
10 content of Kombucha Dispensing Equipment.

11 8. NOTICE

12 8.1 When any party is entitled to receive any notice or report under this Consent
13 Judgment, the notice or report shall be made in writing and sent via U.S. Mail or other manner of
14 overnight delivery to the following:

15 8.1.1 For Mateel: William Verick, Klamath Environmental Law Center, 1125
16 Sixteenth Street, Suite 204, Arcata, CA 95521, e-mail wverick@igc.org.

17 8.1.2 For Defendant Alfred, Inc.:
18 Ana Tagvoryan
19 Harrison Brown
20 atagvoryan@blankrome.com
21 hbrown@blankrome.com
22 2029 Century Park East | 6th Floor
23 Los Angeles, CA 90067
24 Tel.: 424.239.3400
25 Fax: 424.239.3434

26 8.1.3 For Defendant Melrose Place Coffee Company:
27 Ana Tagvoryan
28 Harrison Brown
atagvoryan@blankrome.com
hbrown@blankrome.com
2029 Century Park East | 6th Floor
Los Angeles, CA 90067
Tel.: 424.239.3400
Fax: 424.239.3434

1 9. AUTHORITY TO STIPULATE

2 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter this Consent Judgment and to execute it on behalf of the
4 party represented and legally to bind that party.

5 10. RETENTION OF JURISDICTION

6 10.1 This court shall retain jurisdiction to implement this Consent Judgment.

7 11. ENTIRE AGREEMENT

8 11.1 This Consent Judgment contains the sole and entire agreement and understanding
9 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
10 negotiations, commitments and understandings related hereto. No representations, oral or
11 otherwise, express or implied, other than those contained herein have been made by any party
12 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
13 deemed to exist or bind any of the Parties.

14 12. GOVERNING LAW

15 12.1 The validity, construction and performance of this consent judgment shall be
16 governed by the laws of the State of California, without reference to any conflicts or law
17 provisions of California law.

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

19 13.1 Mateel agrees to comply with Health & Safety Code § 25249.7's reporting and
20 approval requirements and as implemented by various regulations.

21 14. EXECUTION IN COUNTERPARTS

22 14.1 This Consent Judgment may be executed in counterparts and/or by facsimile,
23 which taken together shall be deemed to constitute one original document.

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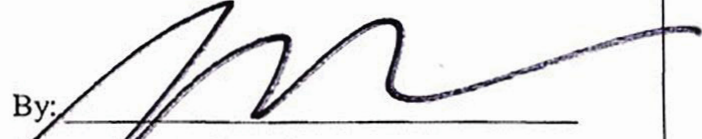
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1 15. COURT APPROVAL

2 15.1. If this Consent Judgment is not approved by the court, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

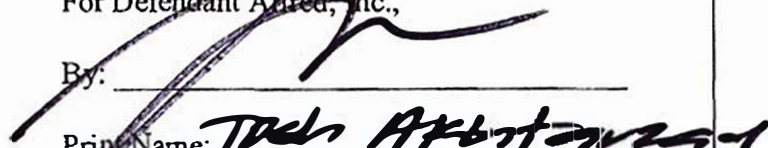
4 IT IS SO STIPULATED:

5
6 DATED: 4/1/20

By: 


Print Name: Josh Akhtarwal
For Defendant Alfred, Inc.,

8
9 DATED: 4/1/20

By: 

Print Name: Josh Akhtarwal
For Defendant Melrose Place Coffee Company

12
13 DATED: 3-31-20



William Verick, CEO of Mateel
Environmental Justice Foundation

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17
18 IT IS SO ORDERED, ADJUDGED AND DECREED:

19
20 Dated: _____

JUDGE OF THE SUPERIOR COURT

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28 CONSENT JUDGMENT,