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11 ENVIRONMENTAL JUSTICE FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 CITY AND COUNTY OF SAN FRANCISCO

14 UNLIMITED JURISDICTION

15  
16 MATEEL ENVIRONMENTAL JUSTICE  
17 FOUNDATION,

18 Plaintiff,

19 v.

20 TAPRITE-FASSCO MFG., INC.

21 Defendants.  
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**ENDORSED  
FILED**  
San Francisco County Superior Court

SEP 06 2011

CLERK OF THE COURT

BY: ERICKA LARNAUTI  
Deputy Clerk

) Case No. CGC-11-512718

) **CONSENT JUDGMENT AS TO  
DEFENDANT TAPRITE-FASSCO  
MFG., INC.**

1       **1. INTRODUCTION**

2           1.1     On or about December 23, 2009, plaintiff Mateel Environmental Justice  
3     Foundation (“MEJF”), provided a 60-day Notice of Violation to the California Attorney  
4     General, the District Attorneys of each county in California, the City Attorneys of every  
5     California city with a population greater than 750,000, and defendant Taprite-Fassco Mfg.,  
6     Inc. (formerly known as North American Dispense System, Inc.), (“Taprite”), alleging that  
7     Taprite, through its sales in California of beer taps, faucets and dispensing equipment that  
8     contain lead, was in violation of California Health and Safety Code § 25249.5 et seq.,  
9     (“Proposition 65”) by knowingly and intentionally exposing persons to lead, a product  
10    known to the State of California to cause cancer and/or birth defects or other reproductive  
11    harm, without first providing a clear and reasonable warning.

12           1.2     On or about, July 20, 2011, MEJF, acting in the public interest pursuant to  
13    Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive  
14    Relief in this action in San Francisco County Superior Court, Case No. CGC-11-512718  
15    against Taprite based on the allegations contained in the December 23, 2009 Notice Letter.  
16    MEJF alleges in the Complaint that Taprite is a business that employs more than ten persons  
17    and manufactures, distributes and/or markets within the State of California beer taps,  
18    faucets and dispensing equipment that contains lead. Pursuant to Proposition 65, lead and  
19    lead compounds are chemicals known to the State of California to cause cancer and  
20    reproductive toxicity. MEJF further alleges that beer taps, faucets and dispensing  
21    equipment that are manufactured, distributed, sold and/or marketed by Taprite for use in  
22    California, require a warning under Proposition 65.

23           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this  
24    Court has jurisdiction over the allegations of violations contained in the 60 Day Notice  
25    Letters and Complaint and personal jurisdiction over Settling Defendants as to the acts  
26    alleged in the Complaint, that venue is proper in the County of San Francisco and that this  
27    Court has jurisdiction to enter this Consent Judgment as a full and final settlement and  
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1 resolution of the allegations contained in the Complaint and of all claims which were or  
2 could have been raised based on the facts alleged therein or arising therefrom.

3 1.5 The Parties enter into this Consent Judgment pursuant to a full and final  
4 settlement of disputed claims between the parties for the purpose of avoiding prolonged  
5 litigation. This Consent Judgment and compliance with it shall not constitute an admission  
6 with respect to any allegation made in the 60 Day Notice Letters or the Complaint, each and  
7 every allegation of which Taprite denies, nor may this Consent Judgment or compliance  
8 with it be used as an admission or evidence of any fact, wrongdoing, misconduct,  
9 culpability or liability on the part of a Taprite.

10 **2. DEFINITIONS.**

11 2.1 The term "Covered Product" means a beer tap, faucet, spigot, or other  
12 dispensing equipment made in whole or in part from brass or other copper alloys which  
13 contain lead manufactured, that are marketed or sold by Taprite.

14 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

15 **3. INJUNCTIVE RELIEF**

16 3.1 At any time more than 120 days after the Effective Date, Taprite agrees that it will  
17 not knowingly ship for sale Covered Products for use in California unless the Covered Product  
18 meets the Reformulation Standard of paragraph 3.3.1, or both the Reformulation Standard of  
19 paragraph 3.3.2 and the Warning specification of paragraph 3.4.

20 3.2 Testing Protocol

21 3.2.1. For each product line or manufacturing specification of a Covered Product,  
22 3 units of the Covered Product shall be selected to be tested. The Covered Products which will be  
23 tested shall be randomly selected using any generally accepted random sampling method such as  
24 International Standards Organization 2589-1 (1989).

25 3.2.2. The Exposure Solution referred to below shall be a laboratory standard 4  
26 percent acetic acid solution.

27 3.2.3. Prior to its use in any test of a Covered Product, the Exposure Solution  
28 shall be analyzed for lead, using the method of analysis (with a detection limit of 0.05

1 micrograms of lead per liter of solution) used in the test of the Covered Product under paragraph  
2 3.2.7. The analysis shall be conducted using a sample of the size set forth in paragraph 3.2.5 and  
3 by dispensing the Exposure Solution into a container of the type set forth in such paragraph. The  
4 result shall be the Sample Blank Level.

5 3.2.4. The Covered Product to be tested will be washed in potable water  
6 containing dishwashing detergent, rinsed and dried and will be sanitized before use with a  
7 commercial sanitizing solution per the manufacturer's instructions. If the Covered Product  
8 is an unattached faucet, the Covered Product will be attached to a "test vessel" designed to  
9 accept the Covered Product in a manner similar to a retail version of vessel that  
10 incorporates the Covered Product and which has also been washed and sanitized. The test  
11 vessel shall have a lid that will reduce evaporation of the Exposure Solution during  
12 subsequent steps, shall be of a size to contain a minimum of 3 liters of Exposure Solution,  
13 and manufactured from a material (such as 300 series stainless steel) that will not leach lead  
14 into the Exposure Solution during the testing. Notwithstanding the foregoing, any lead that  
15 does leach from the test vessel shall be added to any lead in the Sample Blank Level and  
16 considered to be a part thereof. If the Covered Product includes a vessel, which contains  
17 an external spigot, the vessel it shall be filled to a minimum of 3 liters or its full capacity,  
18 whichever is less.

19 3.2.5. The Covered Product, or if the Covered Product is an unattached  
20 faucet, the test vessel with the Covered Product faucet attached shall be filled with the 3  
21 liters of Exposure Solution. Approximately 250 milliliters of the Exposure Solution shall  
22 be dispensed by opening the valve of the faucet and then closing the valve, and discarded.  
23 The Exposure Solution shall be held in the test vessel or Covered Product for a period of 4  
24 hours, during which time no Exposure Solution is to be dispensed and no ingredients or  
25 contaminants or other Exposure Solution are to be added. After the 4 hours, 355 milliliters  
26 (12 ounces) are to be dispensed (drawn) through the faucet by opening the valve. The  
27 sample is to be dispensed into a clean PTFE, polyethylene or HDPE container with an air-  
28 tight lid containing an appropriate preservative, if any.

1           3.2.6. An additional sample of 355 milliliters (12 ounces) is to be dispensed after  
2 1/2 hour and a third is to be dispensed after an additional 1/2 hour.

3           3.2.7. Each Exposure Solution sample shall be analyzed for lead using a method  
4 of analysis which has a detection limit of 0.05 micrograms per liter (0.05 ug/L) or less. The  
5 concentration level for the unit of the Covered Product shall be the level of lead that results from  
6 the analysis of the sample, minus the Sample Blank Level.

7           3.2.8. A total of 3 units of the Covered Products shall be tested, unless the mean  
8 concentration for any single tested unit of a Covered Product is more than 2 times greater or less  
9 than the mean of the other two units of the Covered Product, in which case, a fourth unit shall be  
10 tested.

11           3.2.9. The average concentration level of lead in the samples dispensed and  
12 analyzed shall be calculated. The result shall be the Lead Concentration Level for the Covered  
13 Product. This level shall apply to all Covered Products which are manufactured to the same  
14 specifications using the same materials as those tested.

15           3.2.10. Taprite may rely upon the representations from its suppliers that these test  
16 standards have been met to the extent such reliance is in good faith.

17           3.3    Reformulation Standards.

18           3.3.1 Any Covered Product for which the Lead Concentration Level  
19 (outcome of test protocol of 3.2) is less than or equal to 1.5 micrograms per liter may be  
20 shipped for sale in California with no warnings.

21           3.3.2 Any Covered Product for which the Lead Concentration Level  
22 (outcome of test protocol of 3.2) is greater than 1.5 micrograms per liter but less than 50  
23 micrograms per liter may be shipped for sale in California if the warnings of 3.4 are  
24 provided.<sup>1</sup>

25           3.3.3 Covered Products for which the Lead Concentration Level (outcome of test  
26 protocol of 3.2) is greater than 50 micrograms per liter may not be shipped for sale in California.

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28 <sup>1</sup> For purposes of determining whether certain Products comply with Section 3.3.2, Taprite may  
rely upon testing on the Product conducted by Plaintiff.

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3.4 Warnings

3.4.1 Any warning provided pursuant to 3.3.2 above, shall meet the following specifications.

3.4.2 The warning will be affixed to the packaging or labeling of each unit of the Covered Product, or it shall be directly applied to the Product itself.

3.4.3 The warning shall state:

**WARNING:** Consuming food or beverages that have been served from this vessel will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The text of this warning must be in 12 point type or larger. The word "WARNING" must be capitalized and be in bold. The warning must either be on the front or top of the packaging of the Covered Product.

3.4.4 For any entity that sells beverages dispensed from a Covered Product that meets the standard of paragraph 3.3.2, if that entity provides a warning to the consumer purchasing the beverage that is substantially similar to that specified in paragraph 3.4.4, that entity shall be deemed to be in compliance with the warning requirements of Health and Safety Code Section 25249.6 et seq. .

**4. ENFORCEMENT OF JUDGMENT**

4.1. The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto.

**5. MONETARY RELIEF**

5.1. Settling Defendants shall pay a total of \$54,000 in full and complete settlement of all monetary claims by MEJF, as follows:

5.2 Payment shall be made to Klamath Environmental Law Center ("KELC"), and sent to the attention of William Verick, Klamath Environmental Law Center, 424 First Street, Eureka, California 95501, so as to arrive on or before 5 days before any hearing of any motion for approval of the settlement. If the payments have not been so received, MEJF may continue or withdraw any motion to approve this agreement, and this Consent

1 Judgment shall be deemed of no effect. If within 120 days, this Consent Judgment has not  
2 been approved by the Court, these payments will be returned.

3 5.3 Upon approval by the Court of this Consent Judgment, the payments shall  
4 subsequently and within a commercially reasonable time be allocated by KELC as follows:

5 5.3.1 The sum of \$10,000 shall be paid in civil penalties, payable as follows:  
6 75% of the penalty shall be made payable to the Office of Environmental Health Hazard  
7 Assessment, with the remaining 25% payable to Mateel Environmental Justice Foundation in  
8 accordance with California Health and Safety Code § 25192.

9 5.3.2 The sum of \$10,000 shall be paid as a charitable contribution as  
10 follows: \$5,000 to Ecological Rights Foundation, and \$5,000 to Californians For  
11 Alternatives to Toxics. These payments shall be used for reducing exposures to toxic  
12 chemicals and other pollutants, and for increasing consumer, worker and community  
13 awareness of health hazards posed by lead and other toxic chemicals. The Parties agree and  
14 acknowledge that the charitable contributions made pursuant to this Section shall not be  
15 construed as a credit against the personal claims of absent third parties for restitution  
16 against the defendant.

17 5.3.3 The sum of \$34,000 shall be retained by Klamath Environmental Law  
18 Center, as payment in part for the attorneys fees and costs incurred in this action.

19 **6. CLAIMS COVERED AND RELEASE**

20 6.1 As to lead exposures alleged to be caused by Covered Products sold by  
21 Settling Defendants prior to the Effective Date, this Consent Judgment is a final and binding  
22 resolution between MEJF, acting on behalf of itself and as to those matters raised in the 60  
23 Day Notice Letters in the public interest, and Settling Defendants and their parents,  
24 subsidiaries, and affiliates as well as their customers, distributors, wholesalers, retailers, or  
25 any other person in the course of doing business, and the successors and assigns of any of  
26 them, who may have used, maintained, distributed or sold or use, maintain, distribute or sell  
27 Covered Products or other products that include as components Covered Products, including  
28 the Downstream Entities, as defined in Section 6.2 ("Releasees") of: (i) as to lead exposures

1 from Covered Products, any violation of Proposition 65 (including but not limited to the  
2 claims made in the Complaints and the Notices); and (ii) any other claim that could have  
3 been asserted by MEJF in the public interest against the Releasees, based on exposure of  
4 persons to lead from Covered Products or failure to provide a clear and reasonable warning  
5 of such exposure, whether based on actions committed by the Releasees or others. Further,  
6 as part of entry of this Judgment, the Court finds that compliance with the terms of this  
7 Consent Judgment meets the current warning requirements for lead of Proposition 65.

8           6.2     This Consent Judgment contemplates that Covered Products will be sold to third  
9 party manufacturers to be installed in kegerators, beer coolers, and other vessels designed to  
10 dispense beer, cider, wine, sodas or other beverages (“Dispensers”) and that these Dispensers may  
11 then be sold to individual consumers, and to restaurants and institutions which may then use the  
12 Dispensers to sell beverages to the public.<sup>2</sup>The third party manufacturers and their customers,  
13 wholesalers, retailers, or end users and the successors and assigns of any of them, shall be  
14 referred to collectively as “Downstream Entities.” To the extent any Downstream Entity (a) fails  
15 to provide the warning that Taprite provides with the Covered Products, as required by paragraph  
16 3.3.2, or an otherwise clear and reasonable Proposition 65 warning, or (b) sells any Dispenser in  
17 California containing a Covered Product (sold to such Downstream Entities by Taprite at any  
18 time more than 120 days after the Effective Date) that is subject to the prohibition of paragraph  
19 3.3.3, then that Downstream Entity shall not benefit from any release or other protection with  
20 respect to the sale and use of the identified Dispenser that would otherwise be provided by this  
21 Consent Judgment. To the extent that a warning is not provided and the Downstream Entity can  
22 establish that no warning is required pursuant to this Consent Judgment, the release and  
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24 <sup>2</sup> MEJF has issued 60-day notices to several manufacturers of Dispensers and/or their customers,  
25 including Danby Products, Ltd., Banner Equipment Company, The Wasserstrom Company,  
26 Perlick Corporation, Pacific Merchants (Krome), Leland Limited, Inc., Haier America Trading  
27 LLC, Sanyo North America Corporation, CNA International, and Living Direct, Inc. Of these  
28 notice recipients, Taprite only sold Covered Products for use in Dispensers to Danby Products,  
Ltd. and Living Direct, Inc. Taprite also sold Products for use in Dispensers to Sanyo E&E  
Corporation, from whom Sanyo North America Corporation purchased the Dispensers.

1 protection related to the sale and use of the identified Dispenser shall remain in full force and  
2 effect.

3 6.3 In furtherance of the Parties' intention that this Consent Judgment shall be  
4 effective as a full and final accord, satisfaction, and release as to the Releasees of and from  
5 any and all matters released hereunder, MEJF acknowledges familiarity and understanding  
6 of California Civil Code § 1542, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
10 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
OR HER SETTLEMENT WITH THE DEBTOR.

11 To the extent that Section 1542 or any similar law or statute may otherwise apply to this Consent  
12 Judgment, MEJF hereby waives and relinquishes as to all matters released hereunder all rights  
13 and benefits it has, or may have, under Section 1542 or the laws of any other jurisdiction to the  
14 same or similar effect. MEJF further acknowledges that, subsequent to the execution of this  
15 Consent Judgment, it may discover Claims that were unsuspected at the time this Consent  
16 Judgment was executed, and which might have materially affected its decision to execute this  
17 Consent Judgment, but nevertheless MEJF releases the Releasees from any and all such Claims,  
18 whether known or unknown, suspected or unsuspected, at the time of the execution of this  
19 Consent Judgment.

20 **7. APPLICATION OF JUDGMENT**

21 7.1 The obligations of this Consent Judgment shall apply to and be binding upon  
22 all plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7, and  
23 Settling Defendants, and their successors or assigns. The terms contained in this Consent  
24 Judgment shall be submitted to the California Attorney General's office prior to the entry of  
25 this Consent Judgment by the Court.

26 7.2 This Consent Judgment shall have no effect on Covered Products sold or  
27 offered for sale by Settling Defendants outside the State of California.

1       **8.       MODIFICATION OF JUDGMENT**

2           8.1       This Consent Judgment may be modified only upon written agreement of the  
3 parties and upon entry of a modified Consent Judgment by the Court thereon or upon  
4 motion of any party as provided by law and upon entry of a modified Consent Judgment by  
5 the Court.

6           8.2       If the Attorney General of the State of California or Plaintiff permit any sale  
7 with warnings, or alternative reformulation standard and/or test protocol for lead in  
8 products similar to the Covered Products by way of settlement or compromise with any  
9 other person in the course of doing business, or any other entity, or if a warning scheme or  
10 reformulation standard and/or test protocol for lead in Covered Products is incorporated by  
11 Plaintiff in any final judgment as to any other person in the course of doing business, or any  
12 other entity, then Settling Defendants shall be entitled to apply any such warning scheme,  
13 reformulation standard and/or test protocol to Covered Products.

14           8.4       Settling Defendants shall be entitled to a modification to this Consent  
15 Judgment to establish a reformulation standard and/or test protocol for lead content in  
16 Covered Products consistent with any "safe use determination" regarding lead content in  
17 Covered Products issued by the California Environmental Protection Agency Office of  
18 Environmental Health Hazard Assessment, pursuant to 27 Cal. Code Regs. § 25204 or any  
19 successor regulation.

20       **9.       COURT APPROVAL**

21           9.1       If the Court does not approve this Consent Judgment, it shall be of no force or  
22 effect, and cannot be used in any proceeding for any purpose.

23       **10.       RETENTION OF JURISDICTION**

24           10.1.       This Court shall retain jurisdiction of this matter to implement this Consent  
25 Judgment.

26       **11.       GOVERNING LAW**

27           11.1       The laws of the State of California shall govern the validity, construction and  
28 performance of this Consent Judgment.

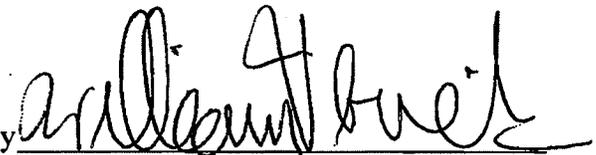
1 **15. EXECUTION IN COUNTERPARTS**

2 15.1 This Consent Judgment may be executed in counterparts and/or by facsimile  
3 or portable document format (pdf), which taken together shall be deemed to constitute one  
4 original document.

5  
6 IT IS SO STIPULATED:

7 Dated: \_\_, 2011

MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATION

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10 By 

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12 Dated: \_\_, 2011

TAPRITE-FASSCO MFG., INC.

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15 By \_\_\_\_\_

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18 IT IS SO ORDERED, ADJUDGED AND DECREED:

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21 Date: SEP 06 2011

LORETTA M. GIORGI  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT