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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

16 MATEEL ENVIRONMENTAL JUSTICE )  
17 FOUNDATION, )  
18 Plaintiff, )  
19 v. )  
20 BANNER EQUIPMENT CO., et. al., )  
21 Defendants. )  
22 )  
23 )  
24 )  
25 )  
26 )  
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28 )

**ENDORSED  
FILED**  
*San Francisco County Superior Court*  
**MAY - 8 2012**  
**CLERK OF THE COURT**  
BY: MARTA VALLEJO  
Deputy Clerk

Case No. CGC-11-512062  
**CONSENT JUDGMENT AS TO  
DEFENDANT DANBY PRODUCTS,  
INC.**

1     **1.     INTRODUCTION**

2             1.1     On or about March 24, 2011, plaintiff Mateel Environmental Justice  
3     Foundation (“MEJF”), provided a 60-day Notice of Violation (“Notice of Violation”) to the  
4     California Attorney General, the District Attorneys of each county in California, the City  
5     Attorneys of every California city with a population greater than 750,000, and defendant  
6     Danby Products, Inc. (“Danby”), alleging that Danby, through its sales in California of beer  
7     taps, faucets and dispensing equipment that contain lead, was in violation of California  
8     Health and Safety Code § 25249.5 et seq., (“Proposition 65”) by knowingly and  
9     intentionally exposing persons to lead, a product known to the State of California to cause  
10    cancer and/or birth defects or other reproductive harm, without first providing a clear and  
11    reasonable warning.

12            1.2     On or about, July 28, 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-11-512062  
15    against Danby based on the allegations contained in the March 24, 2011 Notice Letter.  
16    MEJF alleges in the Complaint that Danby 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 contain 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 Danby 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 Danby denies, nor may this Consent Judgment or compliance with  
8 it be used as an admission or evidence of any fact, wrongdoing, misconduct, culpability or  
9 liability on the part of a Danby.

10 **2. DEFINITIONS.**

11 2.1 The term "Covered Product" means a component (accompanying a Danby  
12 "Kegerator") that serves as a beverage dispenser, such as a beer tap, faucet, spigot, or other  
13 dispensing equipment made in whole or in part from brass or other copper alloys which  
14 contain lead, that is included as an optional part within a Kegerator product marketed or  
15 sold by Danby.

16 2.2 The term "Kegerator" means a refrigerator appliance, such as the Danby "Chill 'n  
17 Tap" keg cooler or compact keg cooler, that includes a beverage dispenser, such as a beer tap,  
18 faucet, spigot, or other dispensing equipment, as an optional component. The purchaser of a  
19 Kegerator may use the Kegerator as a refrigerator only, or the purchaser may install the beverage  
20 dispenser to use it as a keg cooler and dispenser.

21 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

22 **3. INJUNCTIVE RELIEF**

23 3.1 At any time more than 120 days after the Effective Date, Danby agrees that it will  
24 not knowingly ship for sale Covered Products for use in California unless the Covered Product  
25 meets the Reformulation Standard of paragraph 3.3.1, or both the Reformulation Standard of  
26 paragraph 3.3.2 and the Warning specification of paragraph 3.4.

27 3.2 Testing Protocol  
28

1                   3.2.1. For each product line or manufacturing specification of a Covered Product,  
2 3 units of the Covered Product shall be selected to be tested. The Covered Products which will be  
3 tested shall be randomly selected using any generally accepted random sampling method such as  
4 International Standards Organization 2589-1 (1989).

5                   3.2.2. The Exposure Solution referred to below shall be a laboratory standard 4  
6 percent acetic acid solution.

7                   3.2.3. Prior to its use in any test of a Covered Product, the Exposure Solution  
8 shall be analyzed for lead, using the method of analysis (with a detection limit of 0.05  
9 micrograms of lead per liter of solution) used in the test of the Covered Product under paragraph  
10 3.2.7. The analysis shall be conducted using a sample of the size set forth in paragraph 3.2.5 and  
11 by dispensing the Exposure Solution into a container of the type set forth in such paragraph. The  
12 result shall be the Sample Blank Level.

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

27                   3.2.5. The Covered Product, or if the Covered Product is an unattached  
28 faucet, the test vessel with the Covered Product faucet attached shall be filled with the 3

1 liters of Exposure Solution. Approximately 250 milliliters of the Exposure Solution shall  
2 be dispensed by opening the valve of the faucet and then closing the valve, and discarded.  
3 The Exposure Solution shall be held in the test vessel or Covered Product for a period of 4  
4 hours, during which time no Exposure Solution is to be dispensed and no ingredients or  
5 contaminants or other Exposure Solution are to be added. After the 4 hours, 355 milliliters  
6 (12 ounces) are to be dispensed (drawn) through the faucet by opening the valve. The  
7 sample is to be dispensed into a clean PTFE, polyethylene or HDPE container with an air-  
8 tight lid containing an appropriate preservative, if any.

9 3.2.6. An additional sample of 355 milliliters (12 ounces) is to be dispensed after  
10 1/2 hour and a third is to be dispensed after an additional 1/2 hour.

11 3.2.7. Each Exposure Solution sample shall be analyzed for lead using a method  
12 of analysis which has a detection limit of 0.05 micrograms per liter (0.05 ug/L) or less. The  
13 concentration level for the unit of the Covered Product shall be the level of lead that results from  
14 the analysis of the sample, minus the Sample Blank Level.

15 3.2.8. A total of 3 units of the Covered Products shall be tested, unless the mean  
16 concentration for any single tested unit of a Covered Product is more than 2 times greater or less  
17 than the mean of the other two units of the Covered Product, in which case, a fourth unit shall be  
18 tested.

19 3.2.9. The average concentration level of lead in the samples dispensed and  
20 analyzed shall be calculated. The result shall be the Lead Concentration Level for the Covered  
21 Product. This level shall apply to all Covered Products which are manufactured to the same  
22 specifications using the same materials as those tested.

23 3.2.10. Danby may rely upon the representations from its suppliers that these test  
24 standards have been met to the extent such reliance is in good faith.

25 3.3 Reformulation Standards.

26 3.3.1 Any Covered Product for which the Lead Concentration Level  
27 (outcome of test protocol of 3.2) is less than or equal to 1.5 micrograms per liter may be  
28 shipped for sale in California with no warnings.

1                   3.3.2 Any Covered Product for which the Lead Concentration Level  
2 (outcome of test protocol of 3.2) is greater than 1.5 micrograms per liter but less than 50  
3 micrograms per liter may be shipped for sale in California if the warnings of 3.4 are  
4 provided.

5                   3.3.3 Covered Products for which the Lead Concentration Level (outcome of test  
6 protocol of 3.2) is greater than 50 micrograms per liter may not be shipped for sale in California.

7                   3.3.4 Danby may rely upon the written representations from its suppliers  
8 regarding which of these reformulation standards is met by the products they supply to Danby, to  
9 the extent such reliance is in good faith.

10                 3.4 Warnings

11                   3.4.1 Any warning provided pursuant to 3.3.2 above, shall meet the following  
12 specifications.

13                   3.4.2 The warning will be affixed to the packaging or labeling of each unit of the  
14 Covered Product.

15  
16                   3.4.4 The warning shall state:

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

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

23                   3.4.5 For any entity that sells beverages dispensed from a Covered Product that  
24 meets the standard of paragraph 3.3.2, if that entity provides a warning to the consumer  
25 purchasing the beverage that is substantially similar to that specified in paragraph 3.4.4, that  
26 entity shall be deemed to be in compliance with the warning requirements of Health and Safety  
27 Code Section 25249.6 et seq.

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1     **4.     ENFORCEMENT OF JUDGMENT**

2             4.1.    The terms of this Consent Judgment shall be enforced exclusively by the  
3 Parties hereto.

4     **5.     MONETARY RELIEF**

5             5.1.    Danby shall pay a total of \$54,000 in full and complete settlement of all  
6 monetary claims by MEJF, as follows:

7             5.2    Payment shall be made to Klamath Environmental Law Center (“KELC”), and  
8 sent to the attention of William Verick, Klamath Environmental Law Center, 424 First  
9 Street, Eureka, California 95501. Danby shall deliver these payments to its attorneys of  
10 record in this action no later than on or before 5 days before any hearing of any motion for  
11 approval of the settlement. Danby’s attorneys shall thereupon notify Mateel by e-mail at  
12 [wverick@igc.org](mailto:wverick@igc.org) that they have received such payments. If Mateel has not been notified  
13 that such payments have been received by Danby’s attorneys, then MEJF may continue or  
14 withdraw any motion to approve this agreement, and this Consent Judgment shall be  
15 deemed of no effect.

16            5.3    Upon approval by the Court of this Consent Judgment, the payments shall  
17 subsequently and within a commercially reasonable time be allocated by KELC as follows:

18                   5.3.1    The sum of \$5,000 shall be paid in civil penalties, payable to the Office of  
19 Environmental Health Hazard Assessment. Mateel waives any right to a share of civil penalties  
20 under Health and Saf. Code Section 25192.

21                   5.3.2    The sum of \$15,000 shall be paid as a charitable contribution as  
22 follows: \$7,500 to Ecological Rights Foundation, and \$7,500 to Californians For  
23 Alternatives to Toxics. These payments shall be used for reducing exposures to toxic  
24 chemicals and other pollutants, and for increasing consumer, worker and community  
25 awareness of health hazards posed by lead and other toxic chemicals. The Parties agree and  
26 acknowledge that the charitable contributions made pursuant to this Section shall not be  
27 construed as a credit against the personal claims of absent third parties for restitution  
28 against the defendant.

1                   5.3.3 The sum of \$34,000 shall be retained by Klamath Environmental Law  
2 Center, as payment in part for the attorneys fees and costs incurred in this action.

3                   5.4 Danby's attorneys shall forward these payments to MEJF's attorneys at the above  
4 address by overnight next-business day delivery no later than the day after the court approves this  
5 consent judgment.

6                   **6. CLAIMS COVERED AND RELEASE**

7                   6.1 As to alleged exposures to lead or lead compounds from Covered Products,  
8 this Consent Judgment provides a full release of liability on behalf of the Public Interest to  
9 Danby, (as well as its past, present and future parents, subsidiaries and affiliates, as well as  
10 their customers, wholesalers, distributors, retailers, and any other person in the course of  
11 doing business, and the successors and assigns of any of them, who may have used  
12 maintained distributed or sold, or use, maintain, distribute, or sell Covered Products or other  
13 products that include as components Covered Products, including the Downstream Entities  
14 as described in paragraph 6.3(collectively, "Releasees"), as to all claims and matters raised  
15 in the Notice of Violation. Notwithstanding any other provision of this Consent Judgment,  
16 no claim or matter is released on behalf of the Public Interest unless that claim or matter  
17 was raised in the Notice of Violation.

18                   6.2 As to alleged exposures to lead or lead compounds from Covered Products,  
19 MEJF, by and on behalf of itself and its respective agents, successors and assigns, waives  
20 any and all rights to institute any form of legal action, and releases all claims against Danby  
21 and the Releasees, and all of their respective parents, subsidiaries or affiliates, and all of  
22 their suppliers, customers, distributors, wholesalers, retailers, or any other person in the  
23 course of doing business, and the successors and assigns of any of them, who may use,  
24 maintain, distribute or sell the Covered Products, whether, under Proposition 65 or  
25 otherwise, arising out of or resulting from, or related directly or indirectly to, in whole or in  
26 part, the Covered Products, including but not limited to any exposure to, or failure to warn  
27 with respect to, the Covered Products (referred to collectively in this paragraph as the  
28 "Claims"). In furtherance of the foregoing, as to alleged exposures to or any failure to warn

1 associated with the Covered Products, MEJF hereby waives any and all rights and benefits  
2 which it now has, or in the future may have, conferred upon it with respect to the Claims by  
3 virtue of the provisions of section 1542 of the California Civil Code, which provides as  
4 follows:

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

10 MEJF understands and acknowledges that the significance and consequence of this waiver  
11 of California Civil Code section 1542 is that even if MEJF suffers future damages arising  
12 out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered  
13 Products, including but not limited to any exposure to, or failure to warn with respect to  
14 exposure to, lead or lead compounds from Covered Products, MEJF will not be able to make  
15 any claim for those damages against Danby or the Releasees. Furthermore, MEJF  
16 acknowledges that it intends these consequences for any such Claims as may exist as of the  
17 date of this release but which MEJF does not know exist, and which, if known, would  
18 materially affect their decision to enter into this Consent Judgment, regardless of whether  
19 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other  
20 cause.

21 6.3 This Consent Judgment contemplates that Covered Products may be sold to  
22 individual consumers, and to restaurants and institutions ("Downstream Entities") which may  
23 then use the Covered Products to sell beverages to the public. To the extent any Downstream  
24 Entity (a) fails to provide the warning that Danby provides with the Covered Products, as required  
25 by paragraph 3.3.2, or an otherwise clear and reasonable Proposition 65 warning, or (b) sells any  
26 Covered Product in California (sold to such Downstream Entities by Danby at any time more than  
27 120 days after the Effective Date) that is subject to the prohibition of paragraph 3.3.3, then that  
28 Downstream Entity shall not benefit from any release or other protection with respect to the sale  
and use of the identified Covered Product that would otherwise be provided by this Consent

1 Judgment. To the extent that a warning is not provided and the Downstream Entity can establish  
2 that no warning is required pursuant to this Consent Judgment, the release and protection related  
3 to the sale and use of the identified Covered Product shall remain in full force and effect.

4 **7. APPLICATION OF JUDGMENT**

5 7.1 The obligations of this Consent Judgment shall apply to and be binding upon  
6 all plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7, and  
7 Settling Defendants, and their successors or assigns. The terms contained in this Consent  
8 Judgment shall be submitted to the California Attorney General's office prior to the entry of  
9 this Consent Judgment by the Court.

10 7.2 This Consent Judgment shall have no effect on Covered Products sold or  
11 offered for sale by Danby outside the State of California.

12 **8. MODIFICATION OF JUDGMENT**

13 8.1 This Consent Judgment may be modified only upon written agreement of the  
14 parties and upon entry of a modified Consent Judgment by the Court thereon or upon  
15 motion of any party as provided by law and upon entry of a modified Consent Judgment by  
16 the Court.

17 8.2 If the Attorney General of the State of California or Plaintiff permit any sale  
18 with warnings, or alternative reformulation standard and/or test protocol for lead in  
19 products similar to the Covered Products by way of settlement or compromise with any  
20 other person in the course of doing business, or any other entity, or if a warning scheme or  
21 reformulation standard and/or test protocol for lead in Covered Products is incorporated by  
22 Plaintiff in any final judgment as to any other person in the course of doing business, or any  
23 other entity, then Settling Defendants shall be entitled to apply any such warning scheme,  
24 reformulation standard and/or test protocol to Covered Products.

25 8.4 Danby shall be entitled to a modification to this Consent Judgment to  
26 establish a reformulation standard and/or test protocol for lead content in Covered Products  
27 consistent with any "safe use determination" regarding lead content in Covered Products  
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1 issued by the California Environmental Protection Agency Office of Environmental Health  
2 Hazard Assessment, pursuant to 27 Cal. Code Regs. § 25204 or any successor regulation.

3 **9. COURT APPROVAL**

4 9.1 If the Court does not approve this Consent Judgment, it shall be of no force or  
5 effect, and cannot be used in any proceeding for any purpose.

6 **10. RETENTION OF JURISDICTION**

7 10.1. This Court shall retain jurisdiction of this matter to implement this Consent  
8 Judgment.

9 **11. GOVERNING LAW**

10 11.1 The laws of the State of California shall govern the validity, construction and  
11 performance of this Consent Judgment.

12 **12. NOTICES**

13 12.1 When any Party is entitled to receive any notice under this Consent Judgment,  
14 the notice or report shall be sent by U.S. mail or overnight courier service to the following  
15 persons:

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17  
18  
19 If to MEJF: William Verick, Esq.  
20 Klamath Environmental Law Center  
424 First Street  
Eureka, CA 95501

21 If to Danby: Linda Evers  
22 Danby  
5070 Whitelaw Road  
23 Guelph, Ontario, CANADA  
N1H 6Z9

24  
25 With a copy to: Andrea Sumits, Esq.  
26 Holland & Knight LLP  
50 California Street, Suite 2800  
San Francisco, CA 94111

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1           12.2 Any Party may modify the person and address to whom notice is to be sent by  
2 sending each other Party notice in accordance with this Section.

3 **13. AUTHORITY TO STIPULATE**

4           13.1 Each signatory to this Consent Judgment certifies that he or she is fully  
5 authorized by the party he or she represents to enter into this Consent Judgment and to  
6 execute it on behalf of the party represented and legally to bind that party.

7 **14. ENTIRE AGREEMENT**

8           14.1 This Consent Judgment contains the sole and entire, agreement and  
9 understanding of the parties with respect to the entire subject matter hereof, and any and all  
10 prior discussions, negotiations, commitments and understandings related hereto. No  
11 representations, oral or otherwise, express or implied, other than those contained herein  
12 have been made by any party hereto. No other agreements not specifically referred to  
13 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

14 **15. EXECUTION IN COUNTERPARTS**

15           15.1 This Consent Judgment may be executed in counterparts and/or by facsimile  
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1 or portable document format (pdf), which taken together shall be deemed to constitute one original document.

2 IT IS SO STIPULATED:

3 Dated: 3/9, 2012

4 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

5 By *William Threlk*

6 Dated: 3/8, 2012

7 DANBY PRODUCTS INC.

8 By *Franka Lewis*

9 IT IS SO ORDERED, ADJUDGED AND DECREED:

10 HAROLD KAHN

11 JUDGE OF THE SUPERIOR COURT

12 MAY - 8 2012

13 Date: