

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-12-521622

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TEXT JUDGMENT

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION VS. FELIX STORCH, INC.

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ENVIRONMENTAL JUSTICE FOUNDATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION,

Plaintiff,

v.

FELIX STORCH, INC.

Defendant.

FILED
San Francisco County Superior Court

JUL 08 2013

CLERK OF THE COURT
BY: *Jessie Fosal*
Deputy Clerk

Case No. CGC-12-521622

CONSENT JUDGMENT AS TO
DEFENDANT FELIX STORCH, INC.

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1. INTRODUCTION

1.1 On or about September 22, 2011, plaintiff Mateel Environmental Justice Foundation ("MEJF"), provided a 60-day Notice of Violation to the California Attorney General, the District Attorneys of each county in California, the City Attorneys of every California city with a population greater than 750,000, and defendant FELIX STORCH INC. ("STORCH"), alleging that STORCH, through its sales in California of beer taps, faucets and dispensing equipment that contain lead, was in violation of California Health and Safety Code § 25249.5 et seq., ("Proposition 65") by knowingly and intentionally exposing persons to lead, a product known to the State of California to cause cancer and/or birth defects or other reproductive harm, without first providing a clear and reasonable warning.

1.2 On or about, June 15, 2012, MEJF, acting in the public interest pursuant to Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief in this action in San Francisco County Superior Court, Case No. CGC-12-521622 against STORCH based on the allegations contained in the September 22, 2011 Notice Letter. MEJF alleges in the Complaint that STORCH is a business that employs more than ten persons and manufactures, distributes and/or markets within the State of California beer taps, faucets and dispensing equipment that contains lead. Pursuant to Proposition 65, lead and lead compounds are chemicals known to the State of California to cause cancer and reproductive toxicity. MEJF further alleges that beer taps, faucets and dispensing equipment that are manufactured, distributed, sold and/or marketed by STORCH for use in California, require a warning under Proposition 65.

1.3 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the 60 Day Notice Letters and Complaint and personal jurisdiction over STORCH as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full and final settlement and resolution of

1 the allegations contained in the Complaint and of all claims which were or could have been
2 raised based on the facts alleged therein or arising therefrom.

3 1.4 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 STORCH 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 STORCH.

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 STORCH.

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, STORCH agrees that it
17 will not knowingly ship for sale Covered Products for use in California unless the Covered
18 Product meets the Reformulation Standard of paragraph 3.3.1, or both the Reformulation
19 Standard of paragraph 3.3.2 and the Warning specification of paragraph 3.4.3.

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. STORCH may rely upon written representations from its suppliers that
16 these test 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.

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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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.

3.4.3 The warning shall state:

WARNING: Consuming food or beverages that have been served from this dispenser 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. STORCH shall pay a total of \$27,500 in full and complete settlement of all monetary claims by MEJF, as follows:

5.2 The sum of \$17,500 shall be made payable to Klamath Environmental Law Center, as payment in part for the attorneys fees and costs incurred in this action. Additionally, the sum of \$9,000 shall be paid as a charitable contribution to the Ecological Rights Foundation. This payment shall be used for reducing exposures to toxic chemicals and other pollutants, and

1 for increasing consumer, worker and community awareness of health hazards posed by lead
2 and other toxic chemicals. The Parties agree and acknowledge that the charitable
3 contributions made pursuant to this Section shall not be construed as a credit against the
4 personal claims of absent third parties for restitution against the defendant.

5 5.3 The sum of \$1,000 shall be paid in civil penalties, payable as follows: 100% of the
6 penalty shall be made payable to the Office of Environmental Health Hazard Assessment, Mateel
7 Environmental Justice Foundation waives its right to collect 25% of the penalty in accordance
8 with California Health and Safety Code § 25192.

9 5.4 The above described payments shall be forwarded by Settling Defendant to its
10 respective counsel so that it is received at least 5 days prior to the hearing date scheduled for
11 approval of this Consent Judgment. Defendant's counsel shall notify counsel for Mateel via
12 email upon receipt of the funds. If the Consent Judgment is approved and entered by the Court, on
13 that day Defendant's counsel shall ensure the above described payments are delivered, via UPS or
14 Fedex for next business day delivery, to Klamath Environmental Law Center. Failure to comply
15 with the terms of this section shall render this Consent Judgment null and void, and the matter
16 shall be placed back on the Court's calendar.

17
18 **6. CLAIMS COVERED AND RELEASE**

19 6.1 As to alleged exposures to lead or lead compounds from Covered Products,
20 this Consent Judgment provides a full release of liability on behalf of the public interest to
21 STORCH, (as well as its past, present and future parents, subsidiaries affiliates,
22 predecessors, successors, and assigns) as to all claims and matters raised in the Notice of
23 Violation. Notwithstanding any other provision of this Consent Judgment, no claim or
24 matter is released on behalf of the public interest unless that claim or matter was raised in
25 the Notice of Violation.

26 6.2 Provided that the requirements of this Consent Judgment are complied with,
27 then, as to lead exposures alleged to be caused by Covered Products sold by STORCH prior
28 to the Effective Date, this Consent Judgment is a final and binding resolution between

1 MEJF, and STORCH, and STORCH'S parents, subsidiaries, and affiliates as well as their
2 customers, distributors, wholesalers, retailers, or any other person in the course of doing
3 business, and the successors and assigns of any of them, who may have used, maintained,
4 distributed or sold or use, maintain, distribute or sell Covered Products or other products
5 that include as components Covered Products, including the Downstream Entities, as
6 defined in Section 6.3 ("Releasees") of: (i) as to lead exposures from Covered Products, any
7 violation of Proposition 65 (including but not limited to the claims made in the Complaints
8 and the Notices); and (ii) any other claim that could have been asserted by MEJF based on
9 exposure of persons to lead from Covered Products or failure to provide a clear and
10 reasonable warning of such exposure, whether based on actions committed by the Releasees
11 or others. Further, as part of entry of this Judgment, the Court finds that compliance with
12 the terms of this Consent Judgment meets the current warning requirements for lead of
13 Proposition 65.

14 6.3 This Consent Judgment contemplates that Covered Products are and will be
15 installed in kegerators, beer coolers, and other vessels designed to dispense beer, cider, wine,
16 sodas or other beverages or liquid foods ("Dispensers") and that these Dispensers and Covered
17 Products are then be sold to individual consumers, and to restaurants and institutions which may
18 then use the products to sell beverages or foods to the public ("Downstream Entities").
19 Notwithstanding 6.2 above, to the extent any Downstream Entity, after the Effective Date of this
20 Consent Judgment, sells or distributes beverages or other foods from any Dispenser in California
21 containing a Covered Product that does not meet the reformulation requirement of paragraph
22 3.3.1 and fails to provide the warning required by paragraph 3.3.2, or an otherwise clear and
23 reasonable Proposition 65 warning, then that Downstream Entity shall not benefit from any
24 release or other protection with respect to the sale and use of the Dispenser or Covered Product
25 that would otherwise be provided by this Consent Judgment. To the extent that a warning is not
26 provided and the Downstream Entity can establish that no warning is required pursuant to this
27 Consent Judgment, the release and protection related to the sale and use of the identified
28 Dispenser shall remain in full force and effect.

1 6.4 In furtherance of the Parties' intention that this Consent Judgment shall be
2 effective as a full and final accord, satisfaction, and release as to the Releasees of and from
3 any and all matters released hereunder, MEJF acknowledges familiarity and understanding
4 of California Civil Code § 1542, which provides as follows:

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

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

18 7. APPLICATION OF JUDGMENT

19 7.1 The obligations of this Consent Judgment shall apply to and be binding upon
20 all plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7, and
21 STORCH, and its successors or assigns. The terms contained in this Consent Judgment
22 shall be submitted to the California Attorney General's office prior to the entry of this
23 Consent Judgment by the Court.

24 7.2 This Consent Judgment shall have no effect on Covered Products sold or
25 offered for sale by STORCH outside the State of California.

26 8. MODIFICATION OF JUDGMENT

27 8.1 This Consent Judgment may be modified only upon written agreement of the
28 parties and upon entry of a modified Consent Judgment by the Court thereon or upon

1 motion of any party as provided by law and upon entry of a modified Consent Judgment by
2 the Court.

3 8.2 If the Attorney General of the State of California or Plaintiff permit any sale
4 with warnings, or alternative reformulation standard and/or test protocol for lead in
5 products similar to the Covered Products by way of settlement or compromise with any
6 other person in the course of doing business, or any other entity, or if a warning scheme or
7 reformulation standard and/or test protocol for lead in Covered Products is incorporated by
8 Plaintiff in any final judgment as to any other person in the course of doing business, or any
9 other entity, then STORCH shall be entitled to apply any such warning scheme,
10 reformulation standard and/or test protocol to Covered Products.

11 8.3 STORCH shall be entitled to a modification to this Consent Judgment to
12 establish a reformulation standard and/or test protocol for lead content in Covered Products
13 consistent with any "safe use determination" regarding lead content in Covered Products
14 issued by the California Environmental Protection Agency Office of Environmental Health
15 Hazard Assessment, pursuant to 27 Cal. Code Regs. § 25204 or any successor regulation.

16 9. **COURT APPROVAL**

17 9.1 If the Court does not approve this Consent Judgment, it shall be of no force or
18 effect, and cannot be used in any proceeding for any purpose.

19 10. **RETENTION OF JURISDICTION**

20 10.1. This Court shall retain jurisdiction of this matter to implement this Consent
21 Judgment.

22 11. **GOVERNING LAW**

23 11.1 The laws of the State of California shall govern the validity, construction and
24 performance of this Consent Judgment.

25 12. **NOTICES**

26 12.1 When any Party is entitled to receive any notice under this Consent
27 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to the
28 following persons:

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

If to STORCH: Holly Gaudreau, Esq.
Kilpatrick Townsend and Stockton, LLP
Two Embarcadero Center, 8th Floor
San Francisco, CA 94111

With a copy to: Paul Storch, Vice President
Felix Storch, Inc.
770 Garrison Ave.
Bronx, NY 10474

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

13. **AUTHORITY TO STIPULATE**

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

14. **ENTIRE AGREEMENT**

14.1 This Consent Judgment contains the sole and entire, agreement and understanding 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 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

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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
8 Dated: March 25, 2013

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



By William Verick, President _____

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12
13 Dated: __ __, 2013

FELIX STORCH INC.

By Ken Cohn _____

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19 IT IS SO ORDERED, ADJUDGED AND DECREED:

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22 Date:

JUDGE OF THE SUPERIOR COURT

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15. EXECUTION IN COUNTERPARTS

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

IT IS SO STIPULATED:

Dated: March 25, 2013

**MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION**

By William Verick, President _____

Dated: April 25, 2013

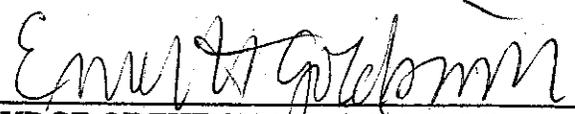
FELIX STORCH INC.



By Paul Storch, Vice President _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date: 7/8/13



JUDGE OF THE SUPERIOR COURT

ERNEST H. GOLDSMITH