

1 **KLAMATH ENVIRONMENTAL LAW**
2 **CENTER**
3 WILLIAM VERICK, CSB #140972
4 FREDRIC EVENSON, CSB #198059
5 424 First Street
6 Eureka, CA 95501
7 Telephone: 707/268-8900
8 Facsimile: 707/268-8901
9 Email: wverick@igc.org, ecorights@earthlink.net

6 DAVID H. WILLIAMS, CSB #144479
7 BRIAN ACREE, CSB #202505
8 370 Grand Avenue, Suite 5
9 Oakland, CA 94610
10 Telephone: 510/271-0826
11 Facsimile: 510/271-0829
12 Email: davidhwilliams@earthlink.net
13 brianacree@earthlink.net

10 Attorneys for Plaintiff MATEEL
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 TAPRITE FASSCO MFG., INC.;;CNA)
21 INTERNATIONAL; HAIER AMERICA)
22 TRADING, LLC; LELAND LIMITED, INC.;;)
23 PERLICK CORPORATION; and PACIFIC)
24 MERCHANTS.)

25 Defendants. _____)

Case No. CGC-11-512718

**CONSENT JUDGMENT AS TO
DEFENDANT PERLICK
CORPORATION**

1 **1. INTRODUCTION**

2 1.1 On or about May 19, 2011, plaintiff Mateel Environmental Justice Foundation
3 ("MEJF"), provided a 60-day Notice of Violation to the California Attorney General, the
4 District Attorneys of each county in California, the City Attorneys of every California city
5 with a population greater than 750,000, and defendant PERLICKPERLICK
6 CORPORATION, ("PERLICK"), alleging that PERLICK, through its sales in California of
7 beer 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, August 5, 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 PERLICK based on the allegations contained in the May 19, 2011 Notice Letter.
16 MEJF alleges in the Complaint that PERLICK is a business that employs more than ten
17 persons and manufactures, distributes and/or markets within the State of California beer
18 taps, faucets and dispensing equipment that contains lead. Pursuant to Proposition 65, lead
19 and 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 PERLICK 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
28

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 PERLICK 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 PERLICK.

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 PERLICK.

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, PERLICK 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.

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. PERLICK 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.

27 3.4 Warnings

28

1 3.4.1 Any warning provided pursuant to 3.3.2 above, shall meet the following
2 specifications.

3 3.4.2 The warning will be affixed to the packaging or labeling of each unit of the
4 Covered Product.

5
6 3.4.4 The warning shall state:

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

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

13 3.4.5 For any entity that sells beverages dispensed from a Covered Product that
14 meets the standard of paragraph 3.3.2, if that entity provides a warning to the consumer
15 purchasing the beverage that is substantially similar to that specified in paragraph 3.4.4, that
16 entity shall be deemed to be in compliance with the warning requirements of Health and Safety
17 Code Section 25249.6 et seq. .

18 **4. ENFORCEMENT OF JUDGMENT**

19 4.1. The terms of this Consent Judgment shall be enforced exclusively by the
20 Parties hereto.

21 **5. MONETARY RELIEF**

22 5.1. Settling Defendants shall pay a total of \$54,000 in full and complete
23 settlement of all monetary claims by MEJF, as follows:

24 5.2 The sum of \$34,000 shall be made payable to Klamath Environmental Law
25 Center, as payment in part for the attorneys fees and costs incurred in this action. Of this
26 amount, \$20,000 shall be forwarded by Settling Defendant to its respective counsel so that
27 it is received at least 5 days prior to the hearing date scheduled for approval of this Consent
28 Judgment. Defendant’s counsel shall notify via email Klamath Environmental Law Center

1 upon receipt of the funds. If the Consent Judgment is approved and entered by the Court, on
2 that day Defendant's counsel shall ensure the above described payments are delivered, via
3 UPS or Fedex for next business day delivery, to Klamath Environmental Law Center. The
4 remaining \$14,000 shall be forwarded to KELC within 30 days of the entry of this Consent
5 Judgment.

6 5.3 Within 60 days after approval by the Court of this Consent Judgment, Settling
7 Defendant shall forward the following amounts to KELC, made payable as set forth below.
8 The payments shall subsequently and within a commercially reasonable time be allocated by
9 KELC.

10 5.3.1 The sum of \$5,000 shall be paid in civil penalties, payable as follows:
11 100% of the penalty shall be made payable to the Office of Environmental Health Hazard
12 Assessment, Mateel Environmental Justice Foundation waives its right to collect 25% of the
13 penalty in accordance with California Health and Safety Code § 25192.

14 5.3.2 The sum of \$15,000 shall be paid as a charitable contribution as
15 follows: \$7,500 to Ecological Rights Foundation, and \$7,500 to Californians For
16 Alternatives to Toxics. These payments shall be used for reducing exposures to toxic
17 chemicals and other pollutants, and for increasing consumer, worker and community
18 awareness of health hazards posed by lead and other toxic chemicals. The Parties agree and
19 acknowledge that the charitable contributions made pursuant to this Section shall not be
20 construed as a credit against the personal claims of absent third parties for restitution
21 against the defendant.

22 23 **6. CLAIMS COVERED AND RELEASE**

24 6.1 As to alleged exposures to lead or lead compounds from Covered Products,
25 this Consent Judgment provides a full release of liability on behalf of the public interest to
26 PERLICK, (as well as its past, present and future parents, subsidiaries affiliates,
27 predecessors, successors, and assigns) as to all claims and matters raised in the Notice of
28 Violation. Notwithstanding any other provision of this Consent Judgment, no claim or

1 matter is released on behalf of the public interest unless that claim or matter was raised in
2 the Notice of Violation.

3 6.2 Provided that the requirements of this Consent Judgment are complied with,
4 then, as to lead exposures alleged to be caused by Covered Products sold by Settling
5 Defendants prior to the Effective Date, this Consent Judgment is a final and binding
6 resolution between MEJF , and PERLICK, and PERLICK'S parents, subsidiaries, and
7 affiliates as well as their customers, distributors, wholesalers, retailers, or any other person
8 in the course of doing business, and the successors and assigns of any of them, who may
9 have used, maintained, distributed or sold or use, maintain, distribute or sell Covered
10 Products or other products that include as components Covered Products, including the
11 Downstream Entities, as defined in Section 6.3 ("Releasees") of: (i) as to lead exposures
12 from Covered Products, any violation of Proposition 65 (including but not limited to the
13 claims made in the Complaints and the Notices); and (ii) any other claim that could have
14 been asserted by MEJF based on exposure of persons to lead from Covered Products or
15 failure to provide a clear and reasonable warning of such exposure, whether based on
16 actions committed by the Releasees or others. Further, as part of entry of this Judgment, the
17 Court finds that compliance with the terms of this Consent Judgment meets the current
18 warning requirements for lead of Proposition 65.

19 6.3 This Consent Judgment contemplates that Covered Products are and will be
20 installed in kegerators, beer coolers, and other vessels designed to dispense beer, cider, wine,
21 sodas or other beverages or liquid foods ("Dispensers") and that these Dispensers and Covered
22 Products are then be sold to individual consumers, and to restaurants and institutions which may
23 then use the products to sell beverages or foods to the public ("Downstream Entities").
24 Notwithstanding 6.2 above, to the extent any Downstream Entity, after the Effective Date of this
25 Consent Judgment, sells or distributes beverages or other foods from any Dispenser in California
26 containing a Covered Product that does not meet the reformulation requirement of paragraph
27 3.3.1 and fails to provide the warning required by paragraph 3.3.2, or an otherwise clear and
28 reasonable Proposition 65 warning, then that Downstream Entity shall not benefit from any

1 release or other protection with respect to the sale and use of the Dispenser or Covered Product
2 that would otherwise be provided by this Consent Judgment. To the extent that a warning is not
3 provided and the Downstream Entity can establish that no warning is required pursuant to this
4 Consent Judgment, the release and protection related to the sale and use of the identified
5 Dispenser shall remain in full force and effect.

6 6.4 In furtherance of the Parties' intention that this Consent Judgment shall be
7 effective as a full and final accord, satisfaction, and release as to the Releasees of and from
8 any and all matters released hereunder, MEJF acknowledges familiarity and understanding
9 of California Civil Code § 1542, which provides as follows:

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

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

23 7. APPLICATION OF JUDGMENT

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

1 7.2 This Consent Judgment shall have no effect on Covered Products sold or
2 offered for sale by Settling Defendants outside the State of California.

3 **8. MODIFICATION OF JUDGMENT**

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

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

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

22 **9. COURT APPROVAL**

23 9.1 If the Court does not approve this Consent Judgment, it shall be of no force or
24 effect, and cannot be used in any proceeding for any purpose.

25 **10. RETENTION OF JURISDICTION**

26 10.1. This Court shall retain jurisdiction of this matter to implement this Consent
27 Judgment.

28

1 **11. GOVERNING LAW**

2 11.1 The laws of the State of California shall govern the validity, construction and
3 performance of this Consent Judgment.

4 **12. NOTICES**

5 12.1 When any Party is entitled to receive any notice under this Consent
6 Judgment, the notice or report shall be sent by U.S. mail or overnight courier service to the
7 following persons:

8
9 If to MEJF: William Verick, Esq.
10 Klamath Environmental Law Center
11 424 First Street
12 Eureka, CA 95501

11 If to PERLICK:

12 With a copy to: Jennifer T. Taggart
13 Demetriou, Del Guercio, Springer & Francis,
14 LLP
15 700 South Flower Street, Suite 2325
16 Los Angeles, CA 90017-4209

16 12.2 Any Party may modify the person and address to whom notice is to be sent by
17 sending each other Party notice in accordance with this Section.

18 **13. AUTHORITY TO STIPULATE**

19 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
20 authorized by the party he or she represents to enter into this Consent Judgment and to
21 execute it on behalf of the party represented and legally to bind that party.

22 **14. ENTIRE AGREEMENT**

23 14.1 This Consent Judgment contains the sole and entire, agreement and
24 understanding of the parties with respect to the entire subject matter hereof, and any and all
25 prior discussions, negotiations, commitments and understandings related hereto. No
26 representations, oral or otherwise, express or implied, other than those contained herein
27

28

1 have been made by any party hereto. No other agreements not specifically referred to
2 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

3 //

4 //

5 //

6 //

7 //

8 //

9 //

10 //

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: __, 2012

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

By 

Dated: __, 2012

PERLICK CORPORATION

By _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date:

JUDGE OF THE SUPERIOR COURT