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17 ENVIRONMENTAL JUSTICE FOUNDATION

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

21 MATEEL ENVIRONMENTAL JUSTICE
22 FOUNDATION,
23
24 Plaintiff,
25
26 v.
27 TAPRITE-FASSCO MFG, INC., et al.,
28 Defendants.

) Case No. CGC-11-512718
)
) **CONSENT JUDGMENT AS TO**
) **DEFENDANT HAIER AMERICA**
) **TRADING, LLC**

1. **INTRODUCTION**

1.1 On or about May 19, 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 HAIER AMERICA TRADING, LLC,

1 (“HAIER”), alleging that HAIER, through its sales in California of beer taps, faucets and
2 dispensing equipment that contain lead, was in violation of California Health and Safety
3 Code § 25249.5 et seq., (“Proposition 65”) by knowingly and intentionally exposing persons
4 to lead, a product known to the State of California to cause cancer and/or birth defects or
5 other reproductive harm, without first providing a clear and reasonable warning.

6 1.2 On or about, August 5, 2011, MEJF, acting in the public interest pursuant to
7 Health and Safety Code § 25249.7(d), filed an Amended Complaint for Civil Penalties and
8 Injunctive Relief in this action in San Francisco County Superior Court, Case No. CGC-11-
9 512718 against HAIER based on the allegations contained in the May 19, 2011 Notice
10 Letter. MEJF alleges in the Complaint that HAIER is a business that employs more than ten
11 persons and manufactures, distributes and/or markets within the State of California beer
12 taps, faucets and dispensing equipment that contains lead. Pursuant to Proposition 65, lead
13 and lead compounds are chemicals known to the State of California to cause cancer and
14 reproductive toxicity. MEJF further alleges that beer taps, faucets and dispensing
15 equipment that are manufactured, distributed, sold and/or marketed by HAIER for use in
16 California, require a warning under Proposition 65.

17 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this
18 Court has jurisdiction over the allegations of violations contained in the 60 Day Notice
19 Letter and Complaint and personal jurisdiction over Settling Defendant as to the acts
20 alleged in the Complaint, that venue is proper in the County of San Francisco and that this
21 Court has jurisdiction to enter this Consent Judgment as a full and final settlement and
22 resolution of the allegations contained in the Complaint and of all claims which were or
23 could have been raised based on the facts alleged therein or arising therefrom.

24 1.5 The Parties enter into this Consent Judgment pursuant to a full and final
25 settlement of disputed claims between the parties for the purpose of avoiding prolonged
26 litigation. This Consent Judgment and compliance with it shall not constitute an admission
27 with respect to any allegation made in the 60 Day Notice Letter or the Complaint, each and
28 every allegation of which HAIER denies, nor may this Consent Judgment or compliance

1 with it be used as an admission or evidence of any fact, wrongdoing, misconduct,
2 culpability or liability on the part of a HAIER.

3 **2. DEFINITIONS.**

4 2.1 The term "Covered Product" means beer taps, beer faucets, beer spigots, or
5 other beer dispensing equipment made in whole or in part from brass or other copper alloys
6 which contain lead, that are manufactured, distributed, marketed or sold by HAIER.

7 2.2 The term "Effective Date" means the date of entry of this Consent Judgment.

8 **3. INJUNCTIVE RELIEF**

9 3.1 At any time more than 120 days after the Effective Date, HAIER agrees that it will
10 not knowingly ship for sale Covered Products for use in California unless the Covered Product
11 meets the Reformulation Standard of paragraph 3.3.1, or both the Reformulation Standard of
12 paragraph 3.3.2 and the Warning specification of paragraph 3.4.

13 **3.2 Testing Protocol**

14 3.2.1. For purposes of determining whether a Covered Product meets this
15 Consent Judgment's Reformulation Standards, the following protocol is to be used. 3 units of the
16 Covered Product shall be selected to be tested using any generally accepted random sampling
17 method such as International Standards Organization 2589-1 (1989).

18 3.2.2. The Exposure Solution referred to below shall be a laboratory standard 4
19 percent acetic acid solution.

20 3.2.3. Prior to its use in any test of a Covered Product, the Exposure Solution
21 shall be analyzed for lead, using the method of analysis (with a detection limit of 0.05
22 micrograms of lead per liter of solution) used in the test of the Covered Product under paragraph
23 3.2.7. The analysis shall be conducted using a sample of the size set forth in paragraph 3.2.5 and
24 by dispensing the Exposure Solution into a container of the type set forth in such paragraph. The
25 result shall be the Sample Blank Level.

26 3.2.4. The Covered Product to be tested will be washed in potable water
27 containing dishwashing detergent, rinsed and dried and will be sanitized before use with a
28 commercial sanitizing solution per the manufacturer's instructions. If the Covered Product

1 is an unattached faucet, the Covered Product will be attached to a "test vessel" designed to
2 accept the Covered Product in a manner similar to a retail version of vessel that
3 incorporates the Covered Product and which has also been washed and sanitized. The test
4 vessel shall have a lid that will reduce evaporation of the Exposure Solution during
5 subsequent steps, shall be of a size to contain a minimum of 3 liters of Exposure Solution,
6 and manufactured from a material (such as 300 series stainless steel) that will not leach lead
7 into the Exposure Solution during the testing. Notwithstanding the foregoing, any lead that
8 does leach from the test vessel shall be added to any lead in the Sample Blank Level and
9 considered to be a part thereof. If the Covered Product includes a vessel, which contains
10 an external spigot, the vessel it shall be filled to a minimum of 3 liters or its full capacity,
11 whichever is less.

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

22 3.2.6. An additional sample of 355 milliliters (12 ounces) is to be dispensed after
23 1/2 hour and a third is to be dispensed after an additional 1/2 hour.

24 3.2.7. Each Exposure Solution sample shall be analyzed for lead using a method
25 of analysis which has a detection limit of 0.05 micrograms per liter (0.05 ug/L) or less. The
26 concentration level for the unit of the Covered Product shall be the level of lead that results from
27 the analysis of the sample, minus the Sample Blank Level.

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1 3.2.8. A total of 3 units of the Covered Products shall be tested, unless the mean
2 concentration for any single tested unit of a Covered Product is more than 2 times greater or less
3 than the mean of the other two units of the Covered Product, in which case, a fourth unit shall be
4 tested.

5 3.2.9. The average concentration level of lead in the samples dispensed and
6 analyzed shall be calculated. The result shall be the Lead Concentration Level for the Covered
7 Product. This level shall apply to all Covered Products which are manufactured to the same
8 specifications using the same materials as those tested.

9 3.2.10. HAIER may rely upon written representations from its suppliers that these
10 test standards have been met to the extent such reliance is in good faith.

11 3.3 Reformulation Standards.

12 3.3.1 Any Covered Product for which the Lead Concentration Level
13 (outcome of test protocol of 3.2) is less than or equal to 1.5 micrograms per liter may be
14 shipped for sale in California with no warnings.

15 3.3.2 Any Covered Product for which the Lead Concentration Level
16 (outcome of test protocol of 3.2) is greater than 1.5 micrograms per liter but less than 50
17 micrograms per liter may be shipped for sale in California if the warnings of 3.4 are
18 provided.

19 3.3.3 Covered Products for which the Lead Concentration Level (outcome of test
20 protocol of 3.2) is greater than 50 micrograms per liter may not be shipped for sale in California.

21 3.4 Warnings

22 3.4.1 Any warning provided pursuant to 3.3.2 above, shall meet the following
23 specifications.

24 3.4.2 The warning will be affixed to the packaging or labeling of each unit of the
25 Covered Product.

26
27 3.4.4 The warning shall state:
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1 **WARNING:** Consuming food or beverages that have been served from this
2 dispenser will expose you to lead, a chemical known to the State of California to
3 cause birth defects and other reproductive harm.

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

7 3.4.5 For any entity that sells beverages dispensed from a Covered Product that
8 meets the standard of paragraph 3.3.2, if that entity provides a warning to the consumer
9 purchasing the beverage that is substantially similar to that specified in paragraph 3.4.4, that
10 entity shall be deemed to be in compliance with the warning requirements of Health and Safety
11 Code Section 25249.6 et seq.

12 **4. ENFORCEMENT OF JUDGMENT**

13 4.1. The terms of this Consent Judgment shall be enforced exclusively by the
14 Parties hereto.

15 **5. MONETARY RELIEF**

16 5.1. Settling Defendant shall pay a total of \$55,000 in full and complete settlement
17 of all monetary claims by MEJF, as follows:

18 5.2 The above described payments shall be forwarded by Settling Defendant to its
19 respective counsel so that they are received at least 5 days prior to the hearing date
20 scheduled for approval of this Consent Judgment. Defendant's counsel shall notify via
21 email Klamath Environmental Law Center upon receipt of the funds. If the Consent
22 Judgment is approved and entered by the Court, on that day Defendant's counsel shall
23 ensure the above described payments are delivered, via UPS or Fedex for next business day
24 delivery, to Klamath Environmental Law Center.

25 5.3 Upon approval by the Court of this Consent Judgment, the payments shall
26 subsequently and within a commercially reasonable time be allocated by KELC as follows:

27 5.3.1 The sum of \$5,000 shall be paid in civil penalties. Mateel waives its
28 entitlement to 25% of this amount, and thus the entire amount of civil penalties shall be made

1 payable, pursuant to the statute, to the Office of Environmental Health Hazard Assessment
2 (OEHHA).

3 5.3.2 The sum of \$10,000 shall be paid as a charitable contribution as
4 follows: \$5,000 to Ecological Rights Foundation, and \$5,000 to Californians For
5 Alternatives to Toxics. These payments shall be used for reducing exposures to toxic
6 chemicals and other pollutants, and for increasing consumer, worker and community
7 awareness of health hazards posed by lead and other toxic chemicals. The Parties agree and
8 acknowledge that the charitable contributions made pursuant to this Section shall not be
9 construed as a credit against the personal claims of absent third parties for restitution
10 against the defendant.

11 5.3.3 The sum of \$40,000 shall be retained by Klamath Environmental Law
12 Center, as payment in part for the attorneys fees and costs incurred in this action.

13 **6. CLAIMS COVERED AND RELEASE**

14 6.1 As to alleged exposures to lead or lead compounds from Covered Products,
15 this Consent Judgment provides a full release of liability, up through the Effective Date, on
16 behalf of the public interest to HAIER, (as well as its past, present and future parents,
17 subsidiaries affiliates, predecessors, successors, and assigns) as to all claims and matters
18 raised in the Notice of Violation. Notwithstanding any other provision of this Consent
19 Judgment, no claim or matter is released on behalf of the public interest unless that claim or
20 matter was raised in the Notice of Violation.

21 6.2 As to lead exposures allegedly arising from the Covered Products, Mateel, acting
22 on behalf of itself and its agents, successors and assigns, waives all rights to institute any form of
23 legal action, and releases all claims against HAIER and its parents, subsidiaries or affiliates,
24 predecessors, officers, directors, employees, and all of its customers, manufacturers, distributors,
25 wholesalers, retailers or any other person in the course of doing business, and the successors and
26 assigns of any of them, who may manufacture, use, maintain, distribute or sell the Covered
27 Products, whether under Proposition 65 or otherwise. In furtherance of the foregoing, Mateel,
28 acting on behalf of itself hereby waives any and all rights and benefits which it now has, or in the

1 future may have, conferred upon it with respect to the Covered Products by virtue of the
2 provisions of Section 1542 of the California Civil Code, which provides as follows:

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

9 Mateel understands and acknowledges that the significance and consequence of this waiver of
10 California Civil Code Section 1542 is that even if Mateel suffers future damages arising out of or
11 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, it
12 will not be able to make any claim for those damages against HAIER, its parents, subsidiaries or
13 affiliates, predecessors, officers, directors, employees, and all of its customers, manufacturers,
14 distributors, wholesalers, retailers or any other person in the course of doing business, and the
15 successors and assigns of any of them, who may manufacture, use, maintain, distribute or sell the
16 Covered Products. Furthermore, Mateel acknowledges that it intends these consequences for any
17 such claims which may exist as of the date of this release but which Mateel does not know exist,
18 and which, if known, would materially affect its decision to enter into this Consent Judgment,
19 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,
20 negligence, or any other cause.

21 6.3 If a Covered Product that is sold to a Downstream Entity does not meet the
22 reformulation requirement of paragraph 3.3.1 and fails to provide the warning required by
23 paragraph 3.3.2, or an otherwise clear and reasonable Proposition 65 warning, then that
24 Downstream Entity shall not benefit from any release or other protection with respect to the sale
25 and use of the Covered Product that would otherwise be provided by this Consent Judgment. To
26 the extent that a warning is not provided and the Downstream Entity can establish that no warning
27 is required pursuant to this Consent Judgment, the release and protection related to the sale and
28 use of the identified Dispenser shall remain in full force and effect.

27 7. APPLICATION OF JUDGMENT

1 7.1 The obligations of this Consent Judgment shall apply to and be binding upon
2 all plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7, and
3 Settling Defendants, and their successors or assigns. The terms contained in this Consent
4 Judgment shall be submitted to the California Attorney General's office prior to the entry of
5 this Consent Judgment by the Court.

6 7.2 This Consent Judgment shall have no effect on Covered Products sold or
7 offered for sale by Settling Defendants outside the State of California.

8 **7. MODIFICATION OF JUDGMENT**

9 8.1 This Consent Judgment may be modified only upon written agreement of the
10 parties and upon entry of a modified Consent Judgment by the Court thereon or upon
11 motion of any party as provided by law and upon entry of a modified Consent Judgment by
12 the Court.

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

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

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8. COURT APPROVAL

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

9. RETENTION OF JURISDICTION

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

10. GOVERNING LAW

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

11. NOTICES

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

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

If to HAIER: Mary Ann G. Lemere, Esq.
Haier America Trading, LLC
1356 Broadway, New York, NY 10018

With a copy to: Karen F. Lederer, Esq.
Troutman Sanders LLP
The Chrysler Building
405 Lexington Ave., New York, NY 10174

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.

1 **12. AUTHORITY TO STIPULATE**

2 13.1 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the party he or she represents to enter into this Consent Judgment and to
4 execute it on behalf of the party represented and legally to bind that party.

5 **13. ENTIRE AGREEMENT**

6 13.1 This Consent Judgment contains the sole and entire, agreement and
7 understanding of the parties with respect to the entire subject matter hereof, and any and all
8 prior discussions, negotiations, commitments and understandings related hereto. No
9 representations, oral or otherwise, express or implied, other than those contained herein
10 have been made by any party hereto. No other agreements not specifically referred to
11 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

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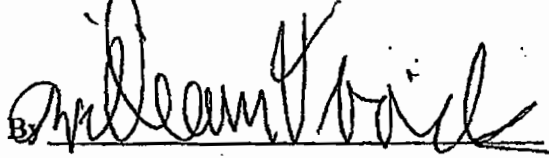
14. EXECUTION IN COUNTERPARTS

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:

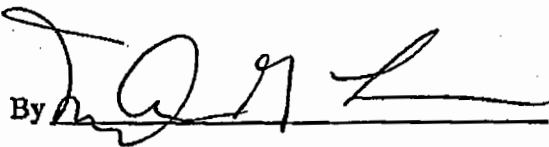
Dated: 9/27, 2012

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

By 

Dated: 8/29 2012

HAIER AMERICA TRADING, LLC

By 

IT IS SO ORDERED, ADJUDGED AND DECREED:

Date: _____
JUDGE OF THE SUPERIOR COURT