

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

6 DAVID WILLIAMS, SBN 144479  
7 BRIAN ACREE, SBN 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 Email: brianacree@earthlink.net

14 Attorneys for Plaintiff, MATEEL  
15 ENVIRONMENTAL JUSTICE FOUNDATION

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 FOR THE COUNTY OF SAN FRANCISCO

18 MATEEL ENVIRONMENTAL  
19 JUSTICE FOUNDATION,

20 Plaintiff,

21 vs.

22 CAMCO MANUFACTURING, INC.,  
23 et al., ,

24 Defendants.

25 ENDORSED  
26 FILED  
27 San Francisco County Superior Court

28 SEP 03 2008

GORDON PARK-LI, Clerk  
BY:           JOCELYN C. ROQUE            
Deputy Clerk

Case No. CGC 08-467065

CONSENT JUDGMENT (As to  
Defendant 99 & Only Stores, Inc.)

1       **1. INTRODUCTION**

2           **1.1**     On or about September 11, 2007, MATEEL ENVIRONMENTAL JUSTICE  
3 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a  
4 complaint for civil penalties and injunctive relief in the above captioned matter in San  
5 Francisco County Superior Court, against several defendants, including 99 Cents Only  
6 Stores, Inc., (“99 ¢ Only” or “Settling Defendant”). The Complaint alleges, among other  
7 things, that Settling Defendant violated the provisions of the Safe Drinking Water and  
8 Toxic Enforcement Act of 1986, Health and Safety Code Sections 25249.5 *et seq.*  
9 (“Proposition 65”), and, in particular, intentionally exposed persons to leaded brass hose  
10 accessories made from leaded brass alloys (“Covered Hose Accessory Products”) which  
11 contain lead and/or lead compounds, which are chemicals known to the State of California  
12 to cause cancer and birth defects or other reproductive harm, without first providing a  
13 clear and reasonable warning to such individuals as required by Health and Safety Code  
14 Section 25249.6.

15           **1.2**     On or about May 24, 2007, a 60 Day Notice Letter (“Hose Accessory 60  
16 Day Notice Letter”) was sent by Mateel to Defendant 99 ¢ Only Stores, Inc., the  
17 California Attorney General, all California District Attorneys, and all City Attorneys of  
18 each California city with a population exceeding 750,000, alleging violations of  
19 Proposition 65 by Settling Defendant because of exposures caused Covered Hose  
20 Accessory Products. A copy the Hose Accessory 60 Day Notice Letter is attached to the  
21 complaint in this action.

22           **1.3**     On or about January 25, 2008, MATEEL ENVIRONMENTAL JUSTICE  
23 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a  
24 complaint for civil penalties and injunctive relief in the above captioned matter in San  
25 Francisco County Superior Court, against several defendants, including 99 ¢ Only Stores,  
26 Inc. *Mateel v. The Faucet Queens, Inc.*, San Francisco Superior Court, Case No. 471406.  
27 The Complaint alleges, among other things, that Settling Defendant violated the  
28 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and

1 Safety Code Section 25249.5, et.seq. (“Proposition 65”). In particular, Mateel alleges that  
2 Settling Defendant has knowingly and intentionally exposed persons to leaded brass  
3 padlocks made from leaded brass alloys (“Covered Padlock Products”) which contain lead  
4 and/or lead compounds, which are chemicals known to the State of California to cause  
5 cancer and birth defects or other reproductive harm, without first providing a clear and  
6 reasonable warning to such individuals as required by Health and Safety Code Section  
7 25249.6.

8 **1.4** On or about May 24, 2007, a 60 Day Notice Letter (“Padlock 60 Day Notice  
9 Letter”) was sent by Mateel to Defendant 99 ¢ Only Stores, Inc., the California Attorney  
10 General, all California District Attorneys, and all City Attorneys of each California city  
11 with a population exceeding 750,000, alleging violations of Proposition 65 by Settling  
12 Defendant because of exposures caused by Covered Padlock Products. A copy the  
13 Padlock 60 Notice Letter is attached to the complaint filed in Case No. 471406, identified  
14 in paragraph 1.3, above.

15 **1.5** On or about October 13, 2000, MATEEL ENVIRONMENTAL JUSTICE  
16 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a  
17 complaint for civil penalties and injunctive relief in the above captioned matter in San  
18 Francisco County Superior Court, against several defendants, including 99 ¢ Only Stores,  
19 Inc. *Mateel v. 99 Cents Only Stores*, San Francisco Superior Court, Case No. 315871.  
20 The Complaint alleges, among other things, that Settling Defendant violated the  
21 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, and the  
22 Unfair Competition Law, because of exposures caused by Hose Accessory Products,  
23 referred to therein as brass irrigation products. A tolling agreement was entered on March  
24 27, 2001, and the matter dismissed without prejudice. On or about March 3, 2008, Mateel  
25 informed 99 ¢ Only Stores that it was terminating the tolling period. For purposes of this  
26 Consent Judgment, the complaints filed in the actions referenced in paragraphs 1.1, 1.3,  
27 and 1.5 above shall be referred to as “Complaints.”  
28

1           **1.6**     On or about March 8, 2000, a 60 Day Notice Letter (“Brass Irrigation  
2 Products 60 Day Notice Letter”) was sent by Mateel to Defendant 99 & Only Stores, Inc.,  
3 the California Attorney General, all California District Attorneys, and all City Attorneys  
4 of each California city with a population exceeding 750,000, alleging violations of  
5 Proposition 65 by Settling Defendant because of exposures caused by Covered Hose  
6 Accessory Products, referenced therein as brass irrigation products. A copy the Brass  
7 Irrigation Products 60 Day Notice Letter is attached to the complaint filed in Case No.  
8 315871, identified in paragraph 1.5, above. For purposes of this Consent Judgment, the  
9 60 Day notice letters referenced in paragraphs 1.2, 1.4 and 1.6, above, shall be referred to  
10 as 60 Day Notice Letters.

11           **1.7**     Settling Defendant is a business that employs ten or more persons and  
12 manufactures, distributes supplies and/or otherwise markets Covered Hose Accessory  
13 Products and Covered Padlock Products within the State of California, which are alleged  
14 to contain lead and/or lead compounds. Lead and lead compounds are chemicals known  
15 to the State of California to cause cancer, and lead is a chemical known to the State of  
16 California to cause reproductive toxicity pursuant to Health and Safety Code Section  
17 25249.9. Under specified circumstances, products containing lead and/or lead compounds  
18 that are sold or distributed in the State of California are subject to the Proposition 65  
19 warning requirement set forth in Health and Safety Code Section 25249.6. Plaintiff  
20 Mateel alleges that the leaded brass hose accessories (“Covered Hose Accessory  
21 Products”) and the leaded brass padlocks (“Covered Padlock Products”) manufactured,  
22 distributed, sold and/or marketed by Settling Defendant for use in California require a  
23 warning under Proposition 65. Covered Hose Accessory Products and Covered Padlock  
24 Products are collectively defined or referenced in this Judgment as “Covered Products.”

25           **1.8**     For purposes of this Consent Judgment, the parties stipulate that this Court  
26 has jurisdiction over the allegations of violations contained in the Complaints, and  
27 personal jurisdiction over Settling Defendant as to the acts alleged in the Complaints, and  
28 that venue is proper in the County of San Francisco and that this Court has jurisdiction to

1 enter this Consent Judgment as a full settlement and resolution of the allegations  
2 contained in the Complaints, and of all claims that were or could have been raised by  
3 Mateel, or as to those matters included in the 60 Day Notice Letters, raised by a member  
4 of the general public.

5       **1.9** This Consent Judgment resolves claims that are denied and disputed. The  
6 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
7 all claims between the parties for the purpose of avoiding prolonged litigation. This  
8 Consent Judgment shall not constitute an admission with respect to any material allegation  
9 of the Complaint, each and every allegation of which Settling Defendant denies, nor may  
10 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
11 misconduct, culpability or liability on the part of Settling Defendant.

12 **2. SETTLEMENT PAYMENT**

13       **2.1** Within ten (10) calendar days of entry of this Consent Judgment Settling  
14 Defendant shall pay \$7,500 to the Environmental Protection and Information Center  
15 (EPIC) for work informing the California Consumers about the hazards of and exposures  
16 to toxic chemicals and for work to reduce exposures to and pollution from toxic  
17 chemicals, and \$7,500 to KPFA Radio for stories and reporting programs that pertain to  
18 toxic chemicals. Both are California non-profit, tax-exempt organizations.

19       **2.2** Within ten (10) calendar days of entry of this Consent Judgment by the  
20 Court, Settling Defendant shall pay a civil penalty totaling \$ 2,500, to be allocated and  
21 distributed as required by statute. (Health & Safety Code §25249.12 (c), (d))

22       **2.3** Within ten (10) calendar days of entry of this Consent Judgment, Settling  
23 Defendant shall pay \$20,000 to the Klamath Environmental Law Center (“KELC”) to  
24 cover a portion of Mateel’s attorneys’ fees and costs.

25       **2.4** All payments shall be made by check, payable to the above specified payee  
26 and mailed, or sent by other overnight delivery, to William Verick, Esq., Klamath  
27 Environmental Justice Foundation, 424 First Street, Eureka, CA 95501, to be distributed  
28 by Mr. Verick to the ultimate recipients within a commercially reasonable time.

1     **3. ENTRY OF CONSENT JUDGMENT**

2             **3.1**     The parties hereby request that the Court promptly enter this Consent  
3 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive  
4 their respective rights to a hearing or trial on the allegations of the Complaint.

5     **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

6             **4.1**     This Consent Judgment is a final and binding resolution between Mateel,  
7 acting on behalf of itself and, as to those matters raised in the 60 Day Notice Letters, the  
8 general public, and Settling Defendant, of any violation of Proposition 65, or the  
9 regulations promulgated thereunder, to the fullest extent that it could have been asserted  
10 by Mateel against the Settling Defendant based upon, arising out of, or relating to Settling  
11 Defendant's compliance with Proposition 65, or regulations promulgated thereunder, with  
12 respect to the Covered Products, whether based on actions committed by Settling  
13 Defendant, or by any other entity within the chain of distribution of the Covered Products,  
14 including, but not limited to, manufacturers, wholesale or retail sellers or distributors and  
15 any other person in the course of doing business that manufactured, sold, or distributed the  
16 Covered Products. As to alleged exposures to chemicals listed in the 60 Day Notice  
17 Letters from Covered Products, compliance with the terms of this Consent Judgment  
18 resolves any issue, now and in the future, concerning compliance by Settling Defendant  
19 and its parents, subsidiaries or affiliates, predecessors, officers, directors, employees, and  
20 all manufacturers, customers, distributors, wholesalers, retailers or any other person in the  
21 course of doing business involving the Covered Products, and the successors and assigns  
22 of any of these who may manufacture, use, maintain, distribute, market or sell Covered  
23 Products, with the requirements of Proposition 65. Notwithstanding any other provision  
24 of this agreement, the release by the general public shall not extend beyond the claims and  
25 chemicals identified in the 60 Day Notice Letters referenced in this agreement.

26             **4.2**     As to alleged exposures to chemicals identified in the 60 Day Notice Letters  
27 from Covered Products, Mateel, acting on behalf of itself and, as to the matters in the 60  
28 Day Notice Letters, on behalf of the general public, and its agents, successors and assigns,

1 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or  
2 any other cause.

3 **5. ENFORCEMENT OF JUDGMENT**

4 **5.1** The injunctive terms of this Consent Judgment shall be enforced exclusively  
5 by the parties hereto. The parties may, by noticed motion or order to show cause before  
6 the Superior Court of San Francisco County, giving the notice required by law, enforce  
7 the injunctive terms and conditions contained herein.

8 **5.2** Notice and Cure/Meet and Confer. At any time more than 30 days after the  
9 Effective Date, if it has objective good cause to do so, MEJF may provide Settling  
10 Defendant with a Notice of Violation, alleging that a Covered Product sold by Settling  
11 Defendant is alleged to contain lead in excess of the applicable standard at which a  
12 warning is required under this Consent Judgment, and/or does not comply with the  
13 applicable warning requirement in this Consent Judgment (“Noncompliant Covered  
14 Product”).

15 (a) A Notice of Violation may be based upon “swipe” testing which  
16 Mateel believes establishes that lead is present on the surface of the  
17 Noncompliant Covered Product. The Notice of Violation shall identify the  
18 Noncompliant Covered Product by name, description, SKU, UPC, purchase  
19 location and date, digital photograph(s), if available, and any other  
20 identifying information available to Mateel. MEJF shall provide with the  
21 Notice of Violation copies of available purchase receipts, product tags,  
22 labels, and picture(s) of the Noncompliant Covered Product, and any test  
23 results showing lead level in excess of the applicable reformulation  
24 standard, if any.

25 (b) Within 30 business days of receiving such a Notice of Violation,  
26 Defendant shall provide notice to MEJF of its election to contest or not to  
27 contest the Notice of Violation. If Settling Defendant elects not to contest  
28 the Notice of Violation, it shall, within 30 days after providing its notice of

1 election, either (a) stop sale of the Noncompliant Covered Product in  
2 California, or (b) provide the Noncompliant Covered Product a warning that  
3 complies with this Consent Judgment. If Settling Defendant complies with  
4 this Section, it shall be deemed to be in compliance with this Consent  
5 Judgment, there shall be no further actions taken related to the  
6 Noncompliant Covered Product.

7 (c) If Settling Defendant elects to contest the allegations, Settling  
8 Defendant may provide MEJF with notice of its election, any evidence that  
9 supports its position. If, upon a good faith review, MEJF agrees with  
10 Settling Defendant's position, it shall notify Settling Defendant and no  
11 further action shall be taken. If MEJF disagrees, it shall, within 30 days,  
12 notify Settling Defendant in writing of its decision.

13 (d) If, (a) Settling Defendant has failed within 30 days of receipt of a  
14 Notice of Violation to provide any written notice of its election to correct or  
15 contest the violations identified in the Notice of Violation, or (b) Settling  
16 Defendant has failed, within 30 days of receipt of a Notice of Violation, to  
17 correct any uncontested violations identified in the Notice of Violation, or  
18 (c) Settling Defendant has contested the allegations in the Notice of  
19 Violation, MEJF has disagreed in writing and resolution has not thereafter  
20 been reached despite a good faith effort to meet and confer, MEJF may seek  
21 to enforce the terms of and conditions contained in the Consent Judgment in  
22 the Superior Court of the State of California, County of San Francisco, or  
23 may initiate an enforcement action for new violations pursuant to Health &  
24 Safety Code section 25249.7(d).

25  
26 **6. MODIFICATION OF JUDGMENT**

27 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, or upon motion of

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

3 **7. INJUNCTIVE RELIEF – CLEAR AND REASONABLE WARNINGS**

4 For all Covered Products which are made of a brass alloy containing lead at a  
5 concentration of 300 parts per million (.03%) or higher, sold at retail in California anytime  
6 90 days after entry of this Consent Judgment, a Proposition 65 Warning for Covered  
7 Products, as described below, shall be provided, or according to any warning agreed to by  
8 the California Attorney General:

9 **PROP 65 WARNING: This product contains lead and lead compounds,**  
10 **known to the State of California to cause [cancer, and] birth defects or**  
**other reproductive harm. *Wash your hands after handling this product.***

11 or

12 **PROP 65 WARNING: Handling the brass material on this product exposes**  
13 **you to lead, a chemical known to the State of California to cause [cancer, and]**  
**birth defects and other reproductive harm. *Wash hands after use.***

14 The phrase “PROP 65” may be excluded at the Defendant’s discretion. If included, the  
15 phrase “PROP 65” shall be in capitals. The word “WARNING” shall be in capitals. The  
16 words “*Wash hands after handling this product*” or “*Wash hands after use,*” shall be  
17 italicized or underlined. Inclusion of the bracketed words “cancer, and” in the above  
18 warning shall be at Settling Defendant’s option. The foregoing does not preclude Settling  
19 Defendant from adding a warning for additional Proposition 65 listed chemicals unless the  
20 Attorney General takes the position that such a warning would be misleading or an over-  
21 warning. Such warning shall be prominently affixed to or printed on each Covered  
22 Product, its label, or package and contained in the same section of the label or package  
23 that contains other safety warnings, if any, concerning the use of the Covered Product or  
24 near its displayed price and/or UPC code, and with such conspicuousness, as compared  
25 with other words, statements, designs, or devices on the Covered Product, its label,  
26 package or display as to render it likely to be read and understood by an ordinary  
27 individual.

1     **8.     AUTHORITY TO STIPULATE**

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

5     **9.     RETENTION OF JURISDICTION**

6             This Court shall retain jurisdiction of this matter to implement the Consent  
7 Judgment.

8     **10.    ENTIRE AGREEMENT**

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

15    **11.    GOVERNING LAW**

16             The validity, construction and performance of this Consent Judgment shall be  
17 governed by the laws of the State of California, without reference to any conflicts of law  
18 provisions of California law.

19    **12.    FEES AND EXPENSES**

20             The parties acknowledge and agree that, except as set provided in Section 2.1 of  
21 this Consent Judgment, each party shall bear its own costs and attorneys fees.

22    **13.    COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

23             Mateel agrees to comply with the reporting form and approval requirements  
24 referenced in Health & Safety Code Section 25249.7(f) and as implemented by various  
25 regulations.

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

14. COURT APPROVAL

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

IT IS SO STIPULATED:

Dated: August 29, 2008

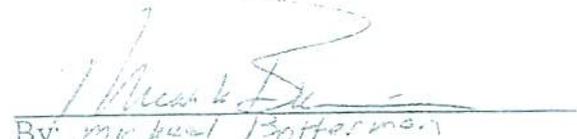
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION



William Verick  
CEO Mateel Environmental Justice Foundation,  
Klamath Environmental Law Center

Dated: August 28, 2008

99¢ ONLY STORES,

  
By: Michael Bottorman  
Its: Vice President

IT IS SO ORDERED, ADJUDGED AND DECREED:

PETER J. BUSCH

Dated: SEP 03 2008

JUDGE OF THE SUPERIOR COURT