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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.

Case No. CGC 08-467065

**CONSENT JUDGMENT (As to
Defendant Camco Manufacturing, Inc.)**

**ENDORSED
FILED**
San Francisco County Superior Court

OCT 22 2008

GORDON PARK-LI, Clerk
BY MARJORIE SCHWARTZ-SCOTT
Deputy Clerk

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 Camco
6 Manufacturing, Inc., ("Camco" or "Settling Defendant"). The Complaint alleges, among
7 other things, that Settling Defendant violated the provisions of the Safe Drinking Water
8 and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et seq.
9 ("Proposition 65"). In particular, Mateel alleges that Settling Defendant has knowingly
10 and intentionally exposed persons to leaded brass hose accessories made from leaded
11 brass alloys ("Covered Products") which contain lead and/or lead compounds, which are
12 chemicals known to the State of California to cause cancer and birth defects or other
13 reproductive harm, without first providing a clear and reasonable warning to such
14 individuals as required by Health and Safety Code Section 25249.6.

15 1.2 On or about May 24, 2007, a 60 Day Notice Letter ("Notice Letter") was
16 sent by Mateel to Defendant Camco Manufacturing, Inc., the California Attorney General,
17 all California District Attorneys, and all City Attorneys of each California city with a
18 population exceeding 750,000.

19 1.3 Settling Defendant is a business that employs ten or more persons and
20 manufactures, distributes, supplies and/or otherwise markets Covered Products within the
21 State of California, which are alleged to contain lead and/or lead compounds. Lead and
22 lead compounds are chemicals known to the State of California to cause cancer, and lead
23 is a chemical known to the State of California to cause reproductive toxicity pursuant to
24 Health and Safety Code Section 25249.9. Under specified circumstances, products
25 containing lead and/or lead compounds that are sold or distributed in the State of
26 California are subject to the Proposition 65 warning requirement set forth in Health and
27 Safety Code Section 25249.6. Plaintiff Mateel alleges that the leaded brass hose
28

1 accessories (“Covered Products”) manufactured, distributed, sold and/or marketed by
2 Settling Defendant for use in California require a warning under Proposition 65.

3 1.4 For purposes of this Consent Judgment, the parties stipulate that this Court
4 has jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is
6 proper in the County of San Francisco and that this Court has jurisdiction to enter this
7 Consent Judgment as a full settlement and resolution of the allegations contained in the
8 Complaint and of all claims that were or could have been raised by Mateel, or as to those
9 matters included in the 60 Day Notice, raised by a member of the general public.

10 1.5 This Consent Judgment resolves claims that are denied and disputed. The
11 parties enter into this Consent Judgment pursuant to a full and final settlement of any and
12 all claims between the parties for the purpose of avoiding prolonged litigation. This
13 Consent Judgment shall not constitute an admission with respect to any material allegation
14 of the Complaint, each and every allegation of which Settling Defendant denies, nor may
15 this Consent Judgment or compliance with it be used as evidence of any wrongdoing,
16 misconduct, culpability or liability on the part of Settling Defendant.

17 **2. SETTLEMENT PAYMENT**

18 2.1 Within ten (10) calendar days of entry of this Consent Judgment Settling
19 Defendant shall pay \$14,000 to the Ecological Rights Foundation for work informing the
20 California Consumers about the hazards of and exposures to toxic chemicals and for work
21 to reduce exposures to and pollution from toxic chemicals. Ecological Rights Foundation
22 is a non-profit environmental organizations that advocate for workers’ and consumers’
23 safety, and for awareness and reduction of toxic exposures.

24 2.2 Within ten (10) calendar days of entry of this Consent Judgment by the
25 Court, Settling Defendant shall pay a civil penalty totaling \$1,000 allocated and
26 distributed as required by statute. (See Health & Safety Code section 25249.12 (c), (d).
27
28

1 2.3 Within ten (10) calendar days of entry of this Consent Judgment, Settling
2 Defendant shall pay \$25,000 to the Klamath Environmental Law Center (“KELC”) to
3 cover a portion of Mateel’s attorneys’ fees and costs.

4 2.4 All payments shall be made by check, payable to the above specified payee
5 and mailed, or sent by other overnight delivery, to William Verick, Esq., Klamath
6 Environmental Justice Foundation, 424 First Street, Eureka, CA 95501, to be distributed
7 by Mr. Verick to the ultimate recipients within a commercially reasonable time.

8 **3. ENTRY OF CONSENT JUDGMENT**

9 3.1 The parties hereby request that the Court promptly enter this Consent
10 Judgment. Upon entry of the Consent Judgment, Settling Defendant and Mateel waive
11 their respective rights to a hearing or trial on the allegations of the Complaint.

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

13 4.1 This Consent Judgment is a final and binding resolution between Mateel,
14 acting on behalf of itself and, as to those matters raised in the 60 Day Notice Letter, the
15 general public, and Settling Defendant, of any violation of Proposition 65, or the
16 regulations promulgated thereunder, to the fullest extent that it could have been asserted
17 by Mateel against the Settling Defendant based upon, arising out of, or relating to Settling
18 Defendant’s compliance with Proposition 65, or regulations promulgated thereunder, with
19 respect to the Covered Products, whether based on actions committed by Settling
20 Defendant, or by any other entity within the chain of distribution of the Covered Products,
21 including, but not limited to, manufacturers, wholesale or retail sellers or distributors and
22 any other person in the course of doing business that manufactured, sold, or distributed the
23 Covered Products. As to alleged exposures to chemicals listed in the 60 Day Notice from
24 Covered Products, compliance with the terms of this Consent Judgment resolves any
25 issue, now and in the future, concerning compliance by Settling Defendant and its parents,
26 subsidiaries or affiliates, predecessors, successors, assigns, officers, directors, employees,
27 and all manufacturers, customers, distributors, wholesalers, retailers or any other person in
28 the course of doing business involving the Covered Products, and the successors and

1 assigns of any of these who may manufacture, use, maintain, distribute, market or sell
2 Covered Products, with the requirements of Proposition 65.

3 **4.2** As to alleged exposures to chemicals identified in the 60 Day Notice Letter
4 from Covered Products, Mateel, acting on behalf of itself and, as to the matters in the 60
5 Day Notice Letter, on behalf of the general public, and its agents, successors and assigns,
6 waives all rights to institute any form of legal action, and releases all claims which were
7 or could have been brought against Settling Defendant and its parents, subsidiaries or
8 affiliates, predecessors, officers, directors, employees, and all customers, manufacturers,
9 distributors, wholesalers, retailers or any other person in the course of doing business
10 involving the Covered Products, and the successors and assigns of any of them, who may
11 manufacture, use, maintain, distribute or sell the Covered Products. This release of
12 claims by the general public is not understood to extend beyond the claims included in the
13 60 Day Notice Letter. In furtherance of the foregoing, Mateel, acting on behalf of itself
14 and the general public, hereby waives any and all rights and benefits which it now has, or
15 in the future may have, conferred upon it with respect to the Covered Products by virtue
16 of the provisions of Section 1542 of the California Civil Code, which provides as follows:

17 **“A GENERAL RELEASE DOES NOT EXTEND TO
18 CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
19 SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
20 EXECUTING THE RELEASE, WHICH IF KNOWN BY
21 HIM MUST HAVE MATERIALLY AFFECTED HIS
22 SETTLEMENT WITH THE DEBTOR.”**

23 Mateel understands and acknowledges that the significance and consequence of this
24 waiver of California Civil Code Section 1542 is that even if Mateel or any member of the
25 general public suffers future damages arising out of or resulting from, or related directly
26 or indirectly to, in whole or in part, the Covered Products, it will not be able to make any
27 claim for those damages against the Settling Defendant, its parents, subsidiaries or
28 affiliates, predecessors, officers, directors, employees, and all customers, manufacturers,
distributors, wholesalers, retailers or any other person in the course of doing business
involving the Covered Products, and the successors and assigns of any of them, who may

1 manufacture, use, maintain, distribute or sell the Covered Products. Furthermore, Mateel
2 acknowledges that it intends these consequences for any such claims which may exist as
3 of the date of this release but which Mateel does not know exist, and which, if known,
4 would materially affect its decision to enter into this Consent Judgment, regardless of
5 whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or
6 any other cause.

7 **5. ENFORCEMENT OF JUDGMENT**

8 5.1 The injunctive terms of this Consent Judgment shall be enforced exclusively
9 by the parties hereto. The parties may, by noticed motion or order to show cause before
10 the Superior Court of San Francisco County, giving the notice required by law, enforce
11 the injunctive terms and conditions contained herein.

12 5.2 In the event that Mateel acting on behalf of itself and/or the general public
13 and its agents, successors and assigns, or others, identifies an alleged violation(s) of
14 Paragraph 7.0, it shall notify Camco in writing, and pursuant to Paragraph 14.0, of the
15 date, time, place and nature of the alleged violation(s), and include any testing data
16 pertaining to the alleged violation(s). The Notice must be served within 60 days of the
17 date of the alleged violoation(s). The parties will meet and confer in good faith for a
18 period of not less than 45 days to investigate and attempt to resolve issues regarding
19 alleged violation(s) before seeking relief from the court pursuant to this section.

20 **6. MODIFICATION OF JUDGMENT**

21 This Consent Judgment may be modified only upon written agreement of the
22 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon
23 motion of any party as provided by law and upon entry of a modified Consent Judgment
24 by the Court.

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

26 7.1 The warning requirements set forth in Paragraph 7.2 shall not be required if
27 the Covered Products meet the following standard:
28

1 a) The Covered Product is made of a brass alloy which contains less
2 than 500 ppm lead, as measured using EPA test method 3050B (with complete digestion
3 of the matrix) or similar test, and results in 5 ppb lead or less in the lead leach test set
4 forth in Exhibit A to this Consent Judgment; or,

5 b) The Covered Product's inner and outer surfaces have been plated
6 with Chrome, Nickel, Zinc and/or Copper which does not contain lead; or,

7 c) The Covered Product is made of low-lead brass Alloy 260 (as
8 formally defined as Alloy C26000 by ASTM Standard Designation for Wrought Alloys
9 and as referenced on Copper Development Association; or,

10 d) Any reformulation standard agreed to by the Attorney General and
11 approved by the Court:

12 **7.2** Except as provided in paragraph 7.1 above, all products manufactured for
13 sale in California 90 days after entry of this Consent Judgment, **and which do not meet a**
14 **standard approved by the Attorney General,** Defendant shall provide a Proposition 65
15 Warning for Covered Products as described below, or according to any warning agreed to
16 by the California Attorney General:

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

20 or

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

24 or

25 PROP 65 WARNING: This product contains chemicals, including lead,
26 known to the State of California to cause [cancer, and] birth defects or other
27 reproductive harm. *Wash hands after use.*

28 (a) The phrase "PROP 65" may be excluded, or exchanged for
"CALIFORNIA PROPOSITION 65" or PROPOSITION 65 at the
Defendant's discretion. If included, the phrase "PROP 65" shall be
in capitals. The word "WARNING" shall be in capitals. The words
"Wash hands after handling this product" or *"Wash hands after use,"*
shall be italicized or underlined. Inclusion of the bracketed words
"cancer, and" in the above warning shall be at Settling Defendant's

1 option. The foregoing does not preclude Settling Defendant from
2 adding a warning for additional Proposition 65 listed chemicals
3 unless the Attorney General takes the position that such a warning
4 would be misleading or an over-warning. Such warning shall be
5 prominently affixed to or printed on each Covered Product, its label,
6 or package and contained in the same section of the label or package
7 that contains other safety warnings, if any, concerning the use of the
8 Covered Product or near its displayed price and/or UPC code, and
9 with such conspicuousness, as compared with other words,
10 statements, designs, or devices on the Covered Product, its label,
11 package or display as to render it likely to be read and understood by
12 an ordinary individual.

13
14 **8. AUTHORITY TO STIPULATE**

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

18 **9. RETENTION OF JURISDICTION**

19 This Court shall retain jurisdiction of this matter to implement the Consent
20 Judgment.

21 **10. ENTIRE AGREEMENT**

22 This Consent Judgment contains the sole and entire agreement and understanding
23 of the parties with respect to the entire subject matter hereof, and any and all prior
24 discussions, negotiations, commitments and understandings related hereto. No
25 representations, oral or otherwise, express or implied, other than those contained herein
26 have been made by any party hereto. No other agreements not specifically referred to
27 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.
28

1 **11. GOVERNING LAW**

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

5 **12. FEES AND EXPENSES**

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

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

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

12 **14. NOTICES**

13 All notices and other communications hereunder shall be communicated to all
14 parties in writing and shall be delivered or mailed by registered or certified mail,
15 postage prepaid and with return receipt requested. Hand-delivered notices shall be
16 deemed communicated when received. Mailed notices shall be deemed
17 communicated when received. Mailed notices shall be deemed communicated as
18 of three (3) full business days after mailing, if mailed, on a business day to the
19 following respective addresses:

20 CAMCO: Raymond F. Lynch, Esq.
21 Hanson Bridgett, LLP
22 425 Market Street, 26th Floor
23 San Francisco, CA 94105-2173
24

25 MATEEL: William Verick, Esq.
26 Klamath Environmental Law Center
27 424 First Street
28 Eureka, CA 95501

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15. 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:

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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

Dated:

Aug 27, 2008

CAMCO MANUFACTURING, INC.,



By:
Its: *CEO.*

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated:

JUDGE OF THE SUPERIOR COURT

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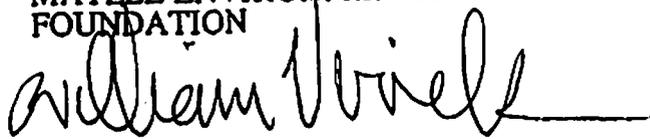
15. COURT APPROVAL

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: *Oct. 10, 2008*

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION



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

Dated: *Aug 27, 2008*

CAMCO MANUFACTURING, INC.,



By:
Its: *CEO.*

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: **OCT 22 2008**

PAUL H. ALVARADO
JUDGE OF THE SUPERIOR COURT

PAUL H. ALVARADO

EXHIBIT A
Test Protocol

1. For all tests, the Exposure Water to be used shall be de-ionized water. This de-ionized water shall be tested for lead prior to using a method of analysis with a minimum detection limit of two ppb ("2 ug/L") lead. If lead is detected, it's concentration shall be subtracted from each test sample's lead concentration when calculating each normalized lead concentration.
2. All samples of Covered Products to be tested shall be randomly selected using a generally accepted random sampling method such as International Standards Organization 2589-1 (1989), any random selection method generally accepted by the National Institute of Standards and Technology, or any authoritative text on statistical sampling.
3. The lot, batch, or group from which any sample is drawn, must be representative of the entire population of units of the model of the Covered Product in question.
4. A representative number of the Covered Products shall be selected, but in no event shall less than three units be tested.
5. Each unit of the Covered Product to be tested shall be rinsed as follows: Each shall be filled with Exposure Water so that the Exposure Water is in contact with the inner surfaces that would have contact with potable water delivered through the sample Covered Product, and then emptied. The Exposure Water emptied from the sample shall be discarded.
6. After rinsing, each sample shall be filled with Exposure Water so that the Exposure Water is in contact with the inner surfaces that could have contact with potable water delivered through the sample Covered Product in its regular use. Once filled, static conditions shall be maintained for 24 ± 1 hour. The Exposure Water shall then be emptied into a clean polytetrafluoroethylene (PTFE) or polyethelene container with an air-tight lid and containing HNO₃ as a preservative. .
7. The Exposure Water from each sample shall be analyzed using equipment and a method of analysis which establish a detection limit of two (2) micrograms of lead per liter ("2 ug/L") or lower for each sample tested. The concentration result of each sample shall be normalized over one liter of water by multiplying by each sample's test water volume expressed in liters. For purposes of calculating the normalized concentration, the detection limit of the analytical method shall be used for those individual units for which "no detect" results is obtained. If the individual test volume is greater than one liter, the concentration of each sample's test

water shall be reported as the normalized concentration (i.e. but not multiply by the volume of the test water expressed in liters).

8. For purposes of the Consent Judgment, the outcome of the test shall be the statistical mean of the normalized concentration of the individual units tested, reported in micrograms per Liter (ug/L), or parts per billion (ppb).