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17 Attorneys for Plaintiff  
18 **MATEEL ENVIRONMENTAL JUSTICE FOUNDATION**

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **FOR THE COUNTY OF SAN FRANCISCO**

21 MATEEL ENVIRONMENTAL  
22 JUSTICE FOUNDATION,

23 Plaintiff,

24 v.

25 ORGILL, INC., et al.,

26 Defendants.

27 Case No. CGC-10-509101

28 **CONSENT JUDGMENT**  
**(ORGILL, INC.)**

29 **ENDORSED**  
**FILED**  
*San Francisco County Superior Court*

30 NOV 29 2011

31 **CLERK OF THE COURT**  
BY: GINA GONZALES  
Deputy Clerk

32 **1. INTRODUCTION**

33 **1.1** On March 11, 2011, the MATEEL ENVIRONMENTAL JUSTICE  
34 FOUNDATION (“Mateel”) acting on behalf of itself and the general public, filed a  
35 Complaint for civil penalties and injunctive relief in San Francisco Superior Court, Case  
36 No. 509101, against Defendant Orgill, Inc, (“ORGILL” or “Settling Defendant”); The  
37 Complaint alleges, among other things, that ORGILL violated provisions of the Safe  
38

1 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Sections  
2 25249.5, et seq. ("Proposition 65"). In particular, Mateel alleges that ORGILL exposed  
3 persons to brass nozzles, brass hose connectors, brass hose couplings, brass couplings  
4 and/or brass quick connects that are made of or that include a component made of leaded  
5 brass, as set out in the 60 Day Notice Letter, and that are manufactured, distributed,  
6 marketed and/or sold by ORGILL (collectively, "Covered Products"), without first  
7 providing a clear and reasonable warning to such individuals. Lead and lead compounds  
8 are chemicals known to the State of California to cause cancer and birth defects or other  
9 reproductive harm.

10 1.2 On October 27, 2010, Mateel sent a Notice of Violation letter ("Notice  
11 Letter") to ORGILL, the California Attorney General, all California District Attorneys,  
12 and all City Attorneys of every California city with populations exceeding 750,000.

13 1.3 ORGILL is a business that employs ten or more persons and  
14 manufactures, distributes, and/or markets various Covered Products that are made of or  
15 contain a component made of leaded brass within the State of California. These products  
16 are alleged to contain lead and/or lead compounds. Lead and lead compounds are  
17 chemicals known to the State of California to cause cancer, and lead is a chemical known  
18 to the State of California to cause reproductive toxicity pursuant to Health and Safety  
19 Code Section 25249.9. Under specified circumstances, products containing lead and/or  
20 lead compounds that are sold or distributed in the State of California are subject to the  
21 Proposition 65 warning requirement set forth in Health and Safety Code Section 25249.6.  
22 Plaintiff Mateel alleges that products that are made from leaded brass, or that have leaded  
23 brass components, are manufactured, distributed, sold and/or marketed by ORGILL for  
24 use in California and require a warning under Proposition 65.

25 1.4 In the Complaint, Mateel alleges that ORGILL violated Cal. Health &  
26 Safety Code Section 25249.6 by exposing persons to Covered Products that contain lead  
27 and/or lead compounds, without first providing a clear and reasonable warning to such  
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1 individuals. Lead and lead compounds are chemicals known to the State of California to  
2 cause cancer and birth defects or other reproductive harm.

3       **1.5** 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 ORGILL as to the acts alleged in the Complaints, that venue is proper in  
6 the County of San Francisco and that this Court has jurisdiction to enter this Consent  
7 Judgment as a full settlement and resolution of the allegations contained in the Complaint  
8 and of all claims that were or could have been raised by any person or entity based in  
9 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or  
10 related thereto.

11       **1.6** This Consent Judgment resolves claims that are denied and disputed. The  
12 parties enter into this Consent Judgment pursuant to a full and final settlement of any and  
13 all claims between the parties for the purpose of avoiding prolonged litigation. This  
14 Consent Judgment shall not constitute an admission with respect to any material allegation  
15 of the Complaints, each and every allegation of which ORGILL denies, nor may this  
16 Consent Judgment or compliance with it be used as evidence of any wrongdoing,  
17 misconduct, culpability or liability on the part of ORGILL.

## 18           **2. SETTLEMENT PAYMENTS**

19       **2.1** In settlement of all of the claims referred to in this Consent Judgment,  
20 ORGILL shall collectively pay an aggregate of \$37,500 (thirty-seven thousand five  
21 hundred dollars) in total monetary relief.

22       **2.2** Of the foregoing \$37,500 amount, a total of \$3,500 (three thousand five  
23 hundred dollars) shall be paid by ORGILL in civil penalty; \$14,000 (fourteen thousand  
24 dollars) shall be paid as an offset payment in lieu of civil penalties to, nonprofit, public  
25 benefit organizations. More specifically, \$7,000 (seven thousand dollars) shall be made  
26 payable to Ecological Rights Foundation, and \$7,000 (seven thousand dollars) shall be  
27 made payable to the Californians for Alternatives to Toxics (CATS).  
28

1           2.3       Of the foregoing \$37,500 amount, a total amount of \$20,000 (twenty  
2 thousand dollars) shall be paid by ORGILL to the Klamath Environmental Law Center  
3 (“KELC”) as reimbursement for attorney’s fees and costs incurred by KELC on behalf of  
4 Plaintiff in investigating and prosecuting this matter and in negotiating this Consent  
5 Judgment on behalf of itself and in the public interest. The payments described in  
6 Paragraphs 2.2 and 2.3 above shall be secured by counsel for defendant at least 5 days  
7 prior to any hearing on a motion to approve this settlement, and arranged for delivery no  
8 later than two business days after the approval of the settlement to William Verick, 424  
9 First Street, Eureka, CA 95501. Payment shall be made by one check payable to Klamath  
10 Environmental Law Center. KELC shall provide tax identification information necessary  
11 to process the settlement payment upon execution of this Consent Judgment. If payment  
12 has not been received as provided in this paragraph, Plaintiff may withdraw any motion to  
13 approve and enter the agreement and the agreement shall become null and void. If this  
14 Consent Judgment has not been approved and entered by the Court within 120 days of the  
15 execution of the agreement by the parties, the payments described above shall be promptly  
16 returned to ORGILL, and the terms of this agreement shall be null and void.

17           2.4       MEJF and KELC represent and warrant that the ERF and CATS are tax  
18 exempt, section 501(c)(3) non-profit organizations and that funds distributed to these  
19 organizations pursuant to this Consent Judgment may only be spent to reduce harm from  
20 toxic chemicals, or to increase consumer, worker and community awareness of health  
21 hazards posed by lead and other toxic chemicals.

22           2.5       Except as specifically provided in this Consent Judgment, each side shall  
23 bear its own costs and attorney’s fees.

### 24           3.       ENTRY OF CONSENT JUDGMENT

25           3.1       The parties hereby request that the Court promptly enter this Consent  
26 Judgment. Upon entry of the Consent Judgment, ORGILL and Mateel waive their  
27 respective rights to a hearing or trial on the allegations of the Complaints.  
28

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

2           **4.1       As to lead and lead compound exposures alleged to be caused by Covered**  
3 **Products, this Consent Judgment is a full, final and binding resolution between ORGILL**  
4 **and Mateel, acting on behalf of itself and as to those matters included in the 60 Day**  
5 **Notice Letter, acting in the public interest pursuant to Health and Safety Code section**  
6 **25249.7(d), of all matters that are or that could have been alleged in the Complaints,**  
7 **including any violation of Proposition 65, or the regulations promulgated thereunder, to**  
8 **the fullest extent that any violation could have been asserted by Mateel against ORGILL**  
9 **based upon, arising out of, or relating to ORGILL's compliance with Proposition 65, or**  
10 **regulations promulgated thereunder, whether based on actions committed by ORGILL, or**  
11 **by any other entity within the chain of manufacture, distribution and sale of the Covered**  
12 **Products. As to alleged lead and lead compound exposures from Covered Products,**  
13 **compliance with the terms of this Consent Judgment resolves any issue, now and in the**  
14 **future, concerning compliance by ORGILL and their parents, subsidiaries or affiliates,**  
15 **divisions, predecessors, successors, assigns, officers, directors, shareholders, attorneys,**  
16 **representatives, agents, employees, insurers, and all manufacturers, customers,**  
17 **distributors, wholesalers, retailers or any other person in the course of doing business**  
18 **involving the Covered Products, and the successors and assigns of any of these who may**  
19 **manufacture, use, maintain, distribute, market or sell Covered Products, with the current**  
20 **requirements and standards of Proposition 65. Plaintiff shall enter a dismissal with**  
21 **prejudice of Defendant Pro-Build Holdings, Inc. within 20 (twenty) days of the Effective**  
22 **Date. This Consent Judgment also is a full, final, and binding resolution between Plaintiff**  
23 **acting on behalf of itself and, as to those matters raised in the 60 Day Notice Letter, acting**  
24 **in the public interest and ORGILL as to any other claims that could have been asserted**  
25 **against ORGILL or its affiliates, parents or subsidiaries, divisions, successors, officers,**  
26 **directors, shareholders, employees, insurers, attorneys, representatives, agents, assigns,**

1 distributors, manufacturers, retailers, or customers for failure to disclose the presence of  
2 lead (or lead compounds) in or associated with use of the Covered Products.

3       4.2 As to alleged lead and lead compound exposures associated with Covered  
4 Products, Mateel, acting on behalf of itself, and its agents, attorneys, representatives,  
5 successors and assigns, waives all rights to institute or participate in, directly, or  
6 indirectly, any form of legal action, and releases all claims as between Mateel and  
7 ORGILL, including, without limitation, all actions, and causes of action, in law or in  
8 equity, suits, liabilities, demands, obligations, agreements, promises, royalties,  
9 accountings, damages, costs, fines, penalties, losses, or expenses (including, but not  
10 limited to, investigation fees, expert fees, and attorney's fees) of any nature whatsoever,  
11 whether known or unknown, fixed or contingent (collectively "claims"), against ORGILL  
12 and its parents, subsidiaries or affiliates, predecessors, officers, directors, shareholders,  
13 attorneys, representatives, agents, employees, insurers and all customers, manufacturers,  
14 distributors, wholesalers, retailers, or any other person in the course of doing business  
15 involving the Covered Products, and the successors and assigns of any of them, who may  
16 manufacture, use, maintain, distribute or sell the Covered Products or components found  
17 in the Covered Products, including, but not limited to, any claims regarding exposure to,  
18 and/or failure to warn with respect to, the Covered Products. In furtherance of the  
19 foregoing, Mateel on its own behalf hereby waives any and all rights and benefits which it  
20 now has, or in the future may have respecting the Covered Products, conferred upon it  
21 with respect to claims involving Covered Products by virtue of the provisions of Section  
22 1542 of the California Civil Code, which provides as follows:

23                   "A GENERAL RELEASE DOES NOT EXTEND TO  
24                   CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR  
25                   SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE  
26                   TIME OF EXECUTING THE RELEASE, WHICH IF  
27                   KNOWN BY HIM OR HER MUST HAVE MATERIALLY  
28                   AFFECTED HIS OR HER SETTLEMENT WITH THE  
29                   DEBTOR."

30       Mateel understands and acknowledges that the significance and consequence of

1 this waiver of California Civil Code Section 1542 is that even if Mateel suffers future  
2 damages arising out of or resulting from, or related directly or indirectly to, in whole or in  
3 part, the Covered Products, including but not limited to any exposure to, or failure to warn  
4 with respect to exposure to lead or lead compounds from, the Covered Products, Mateel  
5 will not be able to make any claim for those damages against ORGILL, its parents,  
6 subsidiaries or affiliates, predecessors, officers, directors, shareholders, representatives,  
7 attorneys, agents, employees, insurers, and all customers, manufacturers, distributors,  
8 wholesalers, retailers or any other person in the course of doing business involving the  
9 Covered Products, and the successors and assigns of any of them, who may manufacture,  
10 use, maintain, distribute or sell the Covered Products. Furthermore, Mateel acknowledges  
11 that it intends these consequences for any such claims and any other claims which may  
12 exist as of the date of this release but which Mateel does not know exist, and which, if  
13 known, would materially affect its decision to enter into this Consent Judgment,  
14 regardless of whether its lack of knowledge is the result of ignorance, oversight, error,  
15 negligence, or any other cause.

## 16 **5. ENFORCEMENT OF JUDGMENT**

17 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the  
18 parties hereto. The parties may, by noticed motion or order to show cause before the  
19 Superior Court of San Francisco County, giving the notice required by law, enforce the  
20 terms and conditions contained herein. The parties hereto agree that prior to any such  
21 enforcement action, they will notify each other of any perceived violation of this Consent  
22 Judgment. The parties further agree to take no enforcement action for 30 days after such  
23 notice is given, in order to allow the parties to meet and confer in good faith in an effort to  
24 resolve the alleged violation.

## 25 **6. MODIFICATION OF JUDGMENT**

26 **6.1** Except as provided for in Paragraph 7.3(c), this Consent Judgment may be  
27 modified only upon written agreement of the parties and upon entry of a modified Consent  
28

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

3 **7. INJUNCTIVE RELIEF - CLEAR AND REASONABLE WARNING**

4 **7.1** Covered Products brass components shall be exempt from warning  
5 requirements of Proposition 65 for lead if the brass that is part of the Covered Products  
6 meets either of the following criteria:

7 (a) The brass alloy from which the brass components are made shall have no  
8 intentionally added lead and a lead content by weight of no more than 0.03% (300 parts  
9 per million, or "300 ppm"). ORGILL may comply with the above requirements by  
10 relying on information obtained from its suppliers regarding the content of the brass alloy  
11 from which the brass products or components are made, provided such reliance is in good  
12 faith. Obtaining test results showing that the lead content is no more than 0.03%, using a  
13 method of sufficient sensitivity to establish a limit of quantification (as distinguished from  
14 detection) of less than 300 ppm shall be deemed to establish good faith reliance; or

15 (b) A Covered Product has only "inaccessible" brass components which are  
16 not touched and do not contact potable water in that it uses brass only as an internal  
17 component not normally accessible to the consumer during ordinary use; and/or it  
18 contains brass only as part of an inner component not normally accessible to the consumer  
19 during ordinary use and the component does not contact potable water ("Inaccessible  
20 Products"). For purposes of clarification, Exhibit A contains a list of examples of  
21 Inaccessible Products that are deemed to be exempt from the warning requirement.

22 **7.2** Covered Products that are distributed for sale in California the after the  
23 one hundred eightieth day following the Effective Date that do not meet the warning  
24 exemption standard set forth in Section 7.1 of the Consent Judgment shall be accompanied  
25 by a warning as described in paragraph 7.3 below. The Effective Date shall be the date  
26 this Consent Judgment is signed and entered by the Court. The warning requirements set  
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1 forth in paragraph 7.3 shall apply only to products ORGILL manufactures, distributes,  
2 markets, sells or ships for distribution for sale or use inside the State of California.

3 7.3 ORGILL shall provide Proposition 65 warnings as follows:

4 (a) ORGILL shall provide either of the following warning statements:

5 **WARNING:** This product contains lead, a chemical known to the State of  
6 California to cause cancer and birth defects or other reproductive harm. Do  
7 not place your hands in your mouth after handling the product. *Wash your*  
8 *hands after touching this product.*

9 or

10 **WARNING:** This product contains chemicals, including lead, known to the  
11 State of California to cause cancer and birth defects or other reproductive  
12 harm. *Wash hands after handling.*

13 The word "WARNING" shall be in bold and capitalized. The words  
14 "Wash hands after handling" shall be in bold and italicized.

15 ORGILL shall provide such warning with the unit package of the  
16 Covered Products. Such warning shall be prominently affixed to or printed  
17 on each Covered Product's label or package. The warning shall be at least  
18 the same size as the largest of any other written safety warnings, if any, on  
19 the product container. If printed on the label itself, the warning shall be  
20 contained in the same section that states other safety warnings, if any,  
21 concerning the use of the product.

22 (b) The requirements for product labeling, set forth in subparagraph (a)  
23 above are imposed pursuant to the terms of this Consent Judgment.

24 (c) If following 90 days after the Effective Date, ORGILL ships Covered  
25 Products that are manufactured after the Effective Date to a retailer or  
26 distributor outside of California that neither provide the warnings specified  
27 in this paragraph nor meet the Reformulation Standard specified in  
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1 paragraph 7.1 of this Consent Judgment (“Non-Conforming Covered  
2 Products”), and if the retailer or distributor then offers those Non-  
3 Conforming Covered Products for sale in California, then as to those Non-  
4 Conforming Covered Products, that retailer or distributor, and their  
5 customers, are not released pursuant to Sections 4.1 and 4.2 above.

6 (d) Except as provided in paragraph 4.2 hereof, nothing in this Consent  
7 Judgment shall create a limitation on a Proposition 65 enforcement action  
8 based on future conduct if such future conduct is not in compliance with the  
9 injunctive terms of this Consent Judgment.

#### 10 **8. AUTHORITY TO STIPULATE**

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

#### 14 **9. RETENTION OF JURISDICTION**

15 This Court shall retain jurisdiction of this matter to implement the Consent  
16 Judgment.

#### 17 **10. ENTIRE AGREEMENT**

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

#### 24 **11. GOVERNING LAW**

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

1           **12. NOTICES**

2           Unless specified herein, all correspondence and notices required to be  
3 provided pursuant to this Consent Judgment shall be in writing and personally delivered  
4 or sent by: (i) first-class, (registered or certified mail) return receipt requested; or  
5 (ii) overnight courier on any party by the other party at the following addresses:

6  
7 **To Mateel:**

8 William Verick, Esq.  
9 Klamath Environmental Law Center  
10 424 First Street  
Eureka, CA 95501

11 **To ORGILL:**

12 Scott Butterworth  
13 Orgill, Inc.  
14 3742 Tyndale Drive  
Memphis, TN 38125

15 **With a copy to:**

16 H. Carl Horneman  
17 Wyatt, Tarrant & Combs  
18 500 W. Jefferson Street  
Suite 2800  
19 Louisville, KY 40202

20 Michael Steel  
21 Morrison & Foerester  
22 425 Market Street  
San Francisco, CA 94105

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**13. COURT APPROVAL**

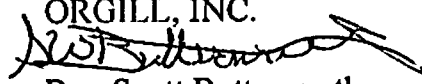
If this Consent Judgment is not approved by the Court, it shall be of no force or effect, and cannot be used in any proceeding for any purpose.

IT IS SO STIPULATED:

DATED: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

DATED: 11/22/11

ORGILL, INC.  
  
By: Scott Butterworth  
Its: Senior Vice President and Chief Financial Officer

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: JUDGE OF THE SUPERIOR COURT


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**13. 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: 11/22/11

ORGILL, INC.  
  
By: Scott Butterworth  
Its: Senior Vice President and  
Chief Financial Officer

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: NOV 29 2011

HAROLD KAHN  
JUDGE OF THE SUPERIOR COURT

## EXHIBIT A<sup>1</sup>

Product	SKU #	RETAIL UPC
Large Brass Twist Hose Nozzle	6943930 Y	034411005286
Poly Pistol Grip Nozzle	6943922 Y	034411005019
Zinc Pistol Grip Hose Nozzle	6221758 Y	034411005644
Pull Nozzel Adjustment Front	9686189 Y	045734623415
Zinc Hose Mender	6323711 Y	034411000922
Female Brs Quick Connect Set	5839915Y	034411000922
Impulse Sled Base Sprinkler	7522865	045734620650

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<sup>1</sup>The models identified in Exhibit A, and pictured below, are examples of “Inaccessible Products,” as used in section 7.1(b) so long as exposed brass components, including control nobs, are covered with a non-lead coating material.



A Large Brass Twist Hose Nozzle



Poly Pistol Grip Nozzle



Zinc Pistol Grip Nozzle



Pull Nozzle Adjustable Front<sup>2</sup>



Zinc Hose Mender

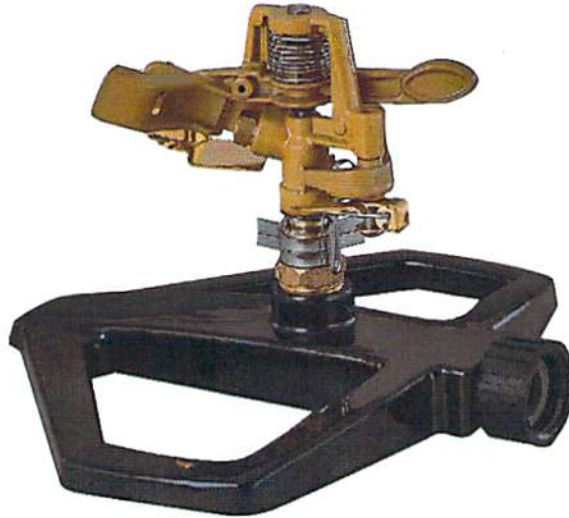


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<sup>2</sup>The front control is with the black plastic collar.



## Female Brass Quick Connect Set



## Impulse Sled Base Sprinkler<sup>3</sup>

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<sup>3</sup>The Impulse Sled Base Sprinkler is an example of an “Inaccessible Product” so long as the sprinkler head parts continue to be coated in a non-lead material and the hose connection is not made of accessible leaded brass.