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MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
15 JUSTICE FOUNDATION,

16 Plaintiff,
17 v.

18 WINNER INTERNATIONAL CORP.; and
19 DOES 1 through 100 inclusive,

20 Defendants.

CASE NO. **CGC 05 43 84 14**

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

21 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

22 INTRODUCTION

23 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
24 failure of defendants WINNER INTERNATIONAL CORP.; and DOES 1 through 100 inclusive
25 (hereinafter "Defendants"), to give clear and reasonable warnings to those residents of California,
26 who handle and use locks (such as bicycle locks) which are coated with lead-containing
27 thermoplastic (hereinafter "PVC-coated locks") that handling and use of these products
28

ENDORSED
FILED
San Francisco County Superior Court
FEB 04 2005
GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

PLAN I JUL 08 2005 900AM

DEPARTMENT 212

1 causes those residents to be exposed to lead and lead compounds, lead acetate, lead phosphate,
2 and lead subacetate (hereinafter, collectively, "lead"). Lead is known to the State of California to
3 cause cancer, birth defects and male and female reproductive toxicity. Defendants manufacture,
4 distribute, and/or market PVC-Coated Locks. These products cause exposures to lead and lead
5 compounds, which are chemicals known to the State of California to cause cancer, birth defects
6 and other reproductive harm.

7 2. Defendants are businesses that manufacture, market, and/or distribute PVC
8 Coated Locks. Defendants intend that residents of California handle and use PVC-Coated Locks
9 that Defendants manufacture, market, and/or distribute. When these products are handled and
10 used in their normally intended manner, they expose people to lead. In spite of knowing that
11 residents of California were and are being exposed to these chemicals when they handle and use
12 PVC-Coated Locks, Defendants did not and do not provide clear and reasonable warnings that
13 these products cause exposure to chemicals known to cause cancer, birth defects and other
14 reproductive harm.

15 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
16 to compel Defendants to bring their business practices into compliance with section 25249.5 et
17 seq. by providing a clear and reasonable warning to each individual who has been and who in the
18 future may be exposed to the above mentioned toxic chemicals from the use of Defendants'
19 products.

20 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
21 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known
22 to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order that
23 defendants identify and locate each individual person who in the past has purchased PVC-Coated
24 Locks and to provide to each such purchaser a clear and reasonable warning that the PVC-Coated
25 Locks will cause exposures to chemicals known to cause birth defects.

PARTIES

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2 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
3 is a non-profit organization dedicated to, among other causes, the protection of the environment,
4 promotion of human health, environmental education, and consumer rights. Mateel is based in
5 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
6 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
7 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
8 California are regularly exposed to lead and lead compounds from PVC-Coated Locks
9 manufactured, distributed or marketed by Defendants and are so exposed without a clear and
10 reasonable Proposition 65 warning.

11 6. Defendants are each a person doing business within the meaning of Health &
12 Safety Code Section 25249.11. Defendants are businesses that manufacture, distribute, and/or
13 market PVC-Coated Locks in California, including the City and County of San Francisco.
14 Manufacture, distribution and/or marketing of these products in the City and County of San
15 Francisco and/or to people who live in San Francisco, causes people to be exposed to lead and
16 lead compounds while they are physically present in the City and County of San Francisco.

17 7. Mateel is unaware of the true names or capacities of the Defendants sued herein
18 under the fictitious names DOES 1 through 100, inclusive. Defendants DOES 1 through 100
19 inclusive are therefore sued herein pursuant to Cal. Code Civ. Proc. §474. When Mateel learns
20 their identities, it will amend the complaint.

21 8. Plaintiff brings this enforcement action against Defendants pursuant to Health &
22 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
23 60-day Notice letter, dated November 16, 2004 which Mateel sent to California's Attorney
24 General. Substantially identical letters were sent to every District Attorney in the state, and to the
25 City Attorneys of every California city with a population greater than 750,000. On that same
26 date, Mateel sent identical 60-Day Notice letters to each defendant. Attached to the 60-Day
27 Notice Letters sent to each defendant was a summary of Proposition 65 that was prepared by
28 California's Office of Environmental Health Hazard Assessment. In addition, each 60-Day

1 Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service of
2 the 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety
3 Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis
4 for the action was also sent with each 60-Day Notice Letter. Factual information sufficient to
5 establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter Mateel
6 sent the Attorney General.

7 9. Defendants are all businesses that employ more than ten people.

8 JURISDICTION

9 10. The Court has jurisdiction over this action pursuant to California Health & Safety
10 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
11 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
12 of the Health & Safety Code, which contains the statutes under which this action is brought, does
13 not grant jurisdiction to any other trial court.

14 11. This Court also has jurisdiction over Defendants because they are businesses that
15 have sufficient minimum contacts in California and within the City and County of San Francisco.
16 Defendants intentionally availed themselves of the California and San Francisco County markets
17 for PVC-Coated Locks. It is thus consistent with traditional notions of fair play and substantial
18 justice for the San Francisco Superior Court to exercise jurisdiction over them.

19 12. Venue is proper in this Court because Defendants market their products in and
20 around San Francisco and thus cause people to be exposed to lead and lead compounds while
21 those people are physically present in San Francisco. Liability for Plaintiff's causes of action, or
22 some parts thereof, has accordingly arisen in San Francisco during the times relevant to this
23 Complaint and Plaintiff seeks civil penalties and forfeitures imposed by statutes.

24 CAUSE OF ACTION
25 (Violations of Proposition 65)

26 13. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as
27 if specifically set forth herein, paragraphs 1 through 12, inclusive.

28 14. The People of the State of California have declared by referendum under

1 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed
2 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

3 15. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
4 that persons who, in the course of doing business, knowingly and intentionally expose any
5 individual to a chemical known to the State of California to cause cancer or birth defects must
6 first provide a clear and reasonable warning to such individual prior to the exposure.

7 16. Since at least November 16, 2003, Defendants have engaged in conduct that
8 violates Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
9 intentionally exposing to the above mentioned toxic chemicals, those California residents who
10 handle and use PVC-Coated Locks. The normally intended use of PVC-Coated Locks causes
11 exposure to lead and lead compounds, which are chemicals known to the State of California to
12 cause cancer, birth defects and other reproductive harm. Defendants have not provided clear and
13 reasonable warnings, within the meaning of Health & Safety Code Sections 25249.6 and
14 25249.11.

15 17. At all times relevant to this action, Defendants knew that the PVC-Coated Locks
16 they manufactured, distributed or marketed were causing exposures to lead and lead compounds.
17 Defendants intended that residents of California handle and use PVC-Coated Locks in such ways
18 as would lead to significant exposures to these chemicals.

19 18. By the above described acts, Defendants are liable and should be liable pursuant
20 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each
21 individual exposed to lead and lead compounds from the handling or use of Defendants' PVC-
22 Coated Locks.

23 PRAYER FOR RELIEF

24 Wherefore, plaintiff prays for judgment against DEFENDANTS, as follows:

25 1. Pursuant to the Cause of Action, that Defendants be assessed a civil penalty in an
26 amount equal to \$2,500.00 per day per individual exposed, in violation of Section 25249.6 of the
27 California Health & Safety Code, to lead and lead compounds as the result of Defendants'
28 manufacturing, distributing or marketing of PVC-Coated Locks;

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2. That all Defendants be enjoined, restrained, and ordered to comply with the provisions of Section 25249.6 of the California Health & Safety Code;

3. That Defendants be ordered to identify and locate each individual who purchased PVC-Coated Locks and provide a warning to each such person that the PVC-Coated Locks the person purchased will expose that person to chemicals known to cause birth defects.

4. For such other relief as this court deems just and proper.

Dated: January 31, 2005

KLAMATH ENVIRONMENTAL LAW CENTER

By 

William Verick
Attorney for Plaintiff
Mateel Environmental Justice Foundation