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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CASE MANAGEMENT CONFERENCE SET

PLAN I SEP 16 2005 9:02 AM

DEPARTMENT 212

9 Attorneys for Plaintiff,
10 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,

CASE NO.

CGC-05-440570

16 Plaintiff,

17 v.

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 SOUTHERN EXCHANGE LP, DBA
19 TEXSPORT; GEORGE R. CHABY, INC.;
HELLY HANSEN US, INC.;
20 WASHINGTON SHOE COMPANY;
PACIFIC TRAIL, INC.; LONDON FOG
21 INDUSTRIES, INC.; and DOES 1 through
100 inclusive,

TOXIC TORT/ENVIRONMENTAL

22 Defendants.
23

24 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

25 INTRODUCTION

26 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
27 failure of defendants SOUTHERN EXCHANGE LP, DBA TEXSPORT; GEORGE R. CHABY,
28 INC.; HELLY HANSEN US, INC.; WASHINGTON SHOE COMPANY; PACIFIC TRAIL,

1 INC.; LONDON FOG INDUSTRIES, INC., and DOES 1 through 100 inclusive (hereinafter
2 “Defendants”), to give clear and reasonable warnings to those residents of California, who handle
3 and use clothing and rainwear made from polyvinyl chloride, neoprene and other plastic that
4 contains lead (hereinafter referred to as “PVC Clothing”), that handling and use of these products
5 causes those residents to be exposed to lead and lead compounds, lead acetate, lead phosphate,
6 and lead subacetate (hereinafter, collectively, “lead”). Lead is known to the State of California
7 to cause cancer, birth defects and male and female reproductive toxicity. Defendants
8 manufacture, distribute, and/or market PVC Clothing. These products cause exposures to lead
9 and lead compounds, which are chemicals known to the State of California to cause cancer, birth
10 defects and other reproductive harm.

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

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

24 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the
25 Defendants’ failure to provide clear and reasonable warnings regarding exposure to chemicals
26 known to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order
27 that Defendants identify and locate each individual person who in the past has purchased PVC
28 Clothing and to provide to each such purchaser a clear and reasonable warning that the PVC

1 Clothing causes and will continue to cause exposures to chemicals known to cause birth defects.

2 PARTIES

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

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

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

22 8. Plaintiff brings this enforcement action against Defendants pursuant to Health &
23 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
24 60-day Notice letter dated December 31, 2004 which Mateel sent to California's Attorney
25 General. Substantially identical letters were sent to every District Attorney in the state, and to the
26 City Attorneys of every California city with a population greater than 750,000. On that same
27 date, Mateel sent identical 60-Day Notice letters to each defendant. Attached to the 60-Day
28 Notice Letters sent to each defendant was a summary of Proposition 65 that was prepared by

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

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

9 JURISDICTION

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

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

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

25 FIRST CAUSE OF ACTION 26 (Claim for Injunctive Relief)

27 13. Plaintiff realleges and incorporates by reference into this First Cause of Action, as
28 if specifically set forth herein, paragraphs 1 through 12, inclusive.

1 14. The People of the State of California have declared by referendum under
2 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed
3 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

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

8 16. Since at least December 31, 2001, Defendants have engaged in conduct that
9 violates Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
10 intentionally exposing to the above mentioned toxic chemicals, those California residents who
11 handle and use PVC Clothing. The normally intended use of PVC Clothing causes exposure to
12 lead and lead compounds, which are chemicals known to the State of California to cause cancer,
13 birth defects and other reproductive harm. Defendants have not provided clear and reasonable
14 warnings, within the meaning of Health & Safety Code Sections 25249.6 and 25249.11.

15 17. At all times relevant to this action, Defendants knew that the PVC Clothing they
16 manufacture, distribute or market cause exposures to lead and lead compounds. Defendants
17 intend that residents of California handle and use PVC Clothing in such ways as would lead to
18 significant exposures to these chemicals.

19 18. By the above described acts, Defendants have violated Cal. Health & Safety Code
20 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
21 65 and requiring them to provide warnings to their past customers who purchased defendants'
22 products without receiving a clear and reasonable warning.

23 SECOND CAUSE OF ACTION
24 (Claim for Civil Penalties)

25 19. Plaintiff realleges and incorporates by reference into this Second Cause of Action,
26 as if specifically set forth herein, paragraphs 1 through 18, inclusive.

27 20. By the above described acts, Defendants are liable and should be liable pursuant
28 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each

1 individual exposed to lead and lead compounds from the handling or use of Defendants' PVC
2 Clothing.

3 PRAYER FOR RELIEF

4 Wherefore, plaintiff prays for judgment against Defendants, as follows:

5 1. Pursuant to the First Cause of Action, that all Defendants be enjoined, restrained,
6 and ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
7 Code;

8 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil
9 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
10 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
11 Defendants' manufacturing, distributing or marketing of bicycles and tricycles that have Leded
12 Handlebars;

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

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

17 Dated: April 12, 2005

18 KLAMATH ENVIRONMENTAL LAW
19 CENTER

20 By 

21 William Verick

22 Attorney for Plaintiff

23 Mateel Environmental Justice Foundation