

ENDORSED
FILED
San Francisco County Superior Court

FEB 06 2007

GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

1 WILLIAM VERICK, SBN 140972
Klamath Environmental Law Center
2 FREDRIC EVENSON, SBN 198059
424 First Street
3 Eureka, CA 95501
Telephone: (707) 268-8900
4 Facsimile: (707) 268-8901

CASE MANAGEMENT CONFERENCE SET

5 DAVID WILLIAMS, SBN 144479
BRIAN ACREE, SBN 202505
6 370 Grand Avenue, Suite 5
Oakland, CA 94610
7 Telephone: (510) 271-0826
8 Facsimile: (510) 271-0829

JUL 06 2007 -9⁰⁰AM

DEPARTMENT 212

9 Attorneys for Plaintiff,
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

13 MATEEL ENVIRONMENTAL
14 JUSTICE FOUNDATION,

CASE NO. CGC-07-460219

15 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

16 v.

17 DAHON CALIFORNIA, INC.

18 Defendant.

19 TOXIC TORT/ENVIRONMENTAL
20
21
22
23
24
25
26
27
28

1 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

2 INTRODUCTION

3 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
4 failure of defendant DAHON CALIFORNIA, INC. (hereinafter "Defendant"), to give clear and
5 reasonable warnings to those residents of California, who come into contact with leaded plastic
6 that houses brake and derailleur cables, or the leaded plastic from which bicycle and tricycle
7 handlebar grips are made, (hereinafter referred to as "leaded cables and grips"), that handling
8 these leaded cables and grips causes those residents to be exposed to lead and lead compounds,
9 lead acetate, lead phosphate, and lead subacetate (hereinafter, collectively, "lead"). Defendant
10 markets leaded cables and grips either as after-market "parts" or incorporated into bicycles and
11 tricycles defendant markets. Lead is known to the State of California to cause cancer, birth
12 defects and male and female reproductive toxicity. These products defendant markets cause
13 exposures to lead and lead compounds, which are chemicals known to the State of California to
14 cause cancer, birth defects and other reproductive harm.

15 2. Defendant is a businesses that manufactures, markets, and/or distributes leaded
16 cables and grips either as after-market "parts" or incorporated into bicycles and tricycles
17 defendant markets. Defendant intends that residents of California handle and use bicycles and
18 tricycles that have leaded cables and grips that Defendant manufactures, markets, and/or
19 distributes. When these products are handled and used in their normally intended manner, they
20 expose people to lead. In spite of knowing that residents of California were and are being
21 exposed to these chemicals when they handle and use leaded cables and grips and/or bicycles and
22 tricycles that have leaded cables and grips, Defendant did not and does not provide clear and
23 reasonable warnings that these products cause exposure to chemicals known to cause cancer,
24 birth defects and other reproductive harm.

25 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
26 to compel Defendant to bring its business practices into compliance with section 25249.5 et seq.
27 by providing a clear and reasonable warning to each individual who has been and who in the
28 future may be exposed to the above mentioned toxic chemicals from the use of Defendant's

1 products.

2 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
3 of Defendant to provide clear and reasonable warnings regarding exposure to chemicals known
4 to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order that
5 defendant identify and locate each individual person who in the past has purchased leaded cables
6 and grips, or bicycles and tricycles that incorporate leaded cables and grips, and to provide to
7 each such purchaser a clear and reasonable warning that such products will cause exposures to
8 chemicals known to cause birth defects.

9 PARTIES

10 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
11 is a non-profit organization dedicated to, among other causes, the protection of the environment,
12 promotion of human health, environmental education, and consumer rights. Mateel is based in
13 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
14 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
15 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
16 California are regularly exposed to lead and lead compounds from the leaded cables and grips
17 themselves and bicycles and tricycles that incorporate leaded cables and grips that Defendant
18 manufactures, distributes or markets, and are so exposed without a clear and reasonable
19 Proposition 65 warning.

20 6. Defendant is a person doing business within the meaning of Health & Safety Code
21 Section 25249.11. Defendant is a businesses that manufactures, distributes, and/or markets
22 leaded cables and grips and/or bicycles and tricycles that have leaded cables and grips in
23 California, including the City and County of San Francisco. Manufacture, distribution and/or
24 marketing of these products in the City and County of San Francisco and/or to people who live in
25 San Francisco, causes people to be exposed to lead and lead compounds while they are physically
26 present in the City and County of San Francisco.

27 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &
28 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a

1 60-day Notice letter dated April 24, 2006, which Mateel sent to California's Attorney General.
2 Substantially identical letters were sent to every District Attorney in the state, and to the City
3 Attorneys of every California city with a population greater than 750,000. On those same dates,
4 Mateel sent identical 60-Day Notice letters to each defendant listed in the Certificate of Service
5 attached to each respective letter. Attached to the 60-Day Notice Letters sent to each defendant
6 was a summary of Proposition 65 that was prepared by California's Office of Environmental
7 Health Hazard Assessment. In addition, each 60-Day Notice Letter plaintiff sent was
8 accompanied by a Certificate of Service attesting to the service of the 60-Day Notice Letter on
9 each entity which received it. Pursuant to California Health & Safety Code Section 25249.7(d), a
10 Certificate of Merit attesting to the reasonable and meritorious basis for the action was also sent
11 with each 60-Day Notice Letter. Factual information sufficient to establish the basis of the
12 Certificate of Merit was enclosed with the 60-Day Notice letter Mateel sent to the Attorney
13 General.

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

15 JURISDICTION

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

21 10. This Court also has jurisdiction over Defendant because it is a business that has
22 sufficient minimum contacts in California and within the City and County of San Francisco.
23 Defendant intentionally availed itself of the California and San Francisco County markets for
24 leaded cables and grips themselves and bicycles and tricycles that incorporate leaded cables and
25 grips. It is thus consistent with traditional notions of fair play and substantial justice for the San
26 Francisco Superior Court to exercise jurisdiction over Defendant.

1 11. Venue is proper in this Court because Defendant markets its products in and
2 around San Francisco and thus cause people to be exposed to lead and lead compounds while
3 those people are physically present in San Francisco. Liability for Plaintiff's causes of action, or
4 some parts thereof, has accordingly arisen in San Francisco during the times relevant to this
5 Complaint and Plaintiff seeks civil penalties and forfeitures imposed by statutes.

6 FIRST CAUSE OF ACTION
7 (Claim for Injunctive Relief)

8 12. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as
9 if specifically set forth herein, paragraphs 1 through 11, inclusive.

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

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

17 15. Since at least April 24, 2003, Defendant has engaged in conduct that violates
18 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
19 intentionally exposing to the above mentioned toxic chemicals, those California residents who
20 handle and use leaded cables and grips and/or bicycles and tricycles that have leaded cables and
21 grips. The normally intended use of leaded cables and grips and/or bicycles and tricycles that
22 have leaded cables and grips causes exposure to lead and lead compounds, which are chemicals
23 known to the State of California to cause cancer, birth defects and other reproductive harm.
24 Defendant has not provided clear and reasonable warnings, within the meaning of Health &
25 Safety Code Sections 25249.6 and 25249.11.

26 16. At all times relevant to this action, Defendant knew that the leaded cables and
27 grips themselves and/or bicycles and tricycles that incorporate leaded cables and grips defendant
28 manufactured, distributed or marketed were causing exposures to lead and lead compounds.

1 Defendant intends that residents of California handle and use leaded cables and grips and/or
2 bicycles and tricycles that have leaded cables and grips in such ways as would lead to significant
3 exposures to these chemicals.

4 17. By the above described acts, Defendant has violated Cal. Health & Safety Code
5 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
6 65 and requiring them to provide warnings to their past customers who purchased defendants'
7 products without receiving a clear and reasonable warning.

8 SECOND CAUSE OF ACTION
9 (Claim for Civil Penalties)

10 18. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as
11 if specifically set forth herein, paragraphs 1 through 17, inclusive.

12 19. By the above described acts, Defendant is liable and should be liable pursuant to
13 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
14 exposed to lead and lead compounds from the handling or use of Defendant's leaded cables and
15 grips.

16 PRAYER FOR RELIEF

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

18 A. Pursuant to the First Cause of Action, that Defendant be enjoined, restrained, and
19 ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
20 Code;

21 B. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
22 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
23 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
24 Defendant's manufacturing, distributing or marketing of leaded cables and grips themselves
25 and/or bicycles and tricycles that incorporate leaded cables and grips;

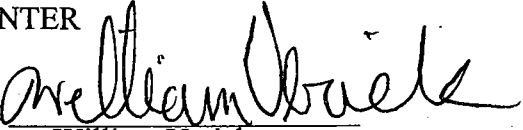
26 C. That Defendant be ordered to identify and locate each individual who purchased
27 leaded cables and grips themselves and/or bicycles and tricycles that incorporate leaded cables
28 and grips and provide a warning to each such person that the leaded cables and grips themselves

1 and bicycles and tricycles that incorporate leaded cables and grips the person purchased will
2 expose that person to chemicals known to cause birth defects.

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

4 Dated: February 1, 2007

5 KLAMATH ENVIRONMENTAL LAW
6 CENTER

7 By 

8 William Verick
9 Attorney for Plaintiff
10 Mateel Environmental Justice Foundation
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28