

COPY

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9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

NOV 03 2006
GORDON PARK-LI, Clerk
BY: DEBORAH STEPPE
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

APR 06 2007 - 9:00 AM

DEPARTMENT 212

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-06-457612

15 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

16 v.

17 KITTRICH CORPORATION; TUFF-WARE,
18 INC., and DOES 1 through 100 inclusive,

19 Defendants.

TOXIC TORT/ENVIRONMENTAL

20 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

21 INTRODUCTION

22 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
23 failure of defendants KITTRICH CORPORATION; TUFF-WARE, INC., and DOES 1 through
24 100 inclusive (hereinafter "Defendants"), to give clear and reasonable warnings to those residents
25 of California, who handle and use shelf and drawer liner material and adhesive decorative
26 covering that are made from lead-containing plastic (hereinafter "leaded plastic coverings"), that
27 handling and use of these products causes those residents to be exposed to lead and lead
28

1 compounds, lead acetate, lead phosphate, and lead subacetate (hereinafter, collectively, "lead").
2 The types of products to which this Complaint pertains are those types listed in the Product List
3 appended to the Proposition 65 60-Day Notice Letter that is attached to and incorporated by
4 reference into this Complaint. Lead is known to the State of California to cause cancer, birth
5 defects and male and female reproductive toxicity. Defendants manufacture, distribute, and/or
6 market . These products cause exposures to lead and lead compounds, which are chemicals
7 known to the State of California to cause cancer, birth defects and other reproductive harm.

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

16 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
17 to compel Defendants to bring their business practices into compliance with section 25249.5 et
18 seq. by providing a clear and reasonable warning to each individual who has been and who in the
19 future may be exposed to the above mentioned toxic chemicals from the use of Defendants'
20 products. Plaintiff seeks an order that defendants identify and locate each individual person who
21 in the past has purchased leaded plastic coverings and to provide to each such purchaser a clear
22 and reasonable warning that the leaded plastic coverings will cause exposures to chemicals
23 known to cause birth defects.

24 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
25 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known
26 to cause cancer, birth defects and other reproductive harm.

27 PARTIES

28 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")

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

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

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

19 8. Plaintiff brings this enforcement action against Defendants pursuant to Health &
20 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
21 60-day Notice letter dated July 29, 2006 which Mateel sent to California's Attorney General.
22 Substantially identical letters were sent to every District Attorney in the state, and to the City
23 Attorneys of every California city with a population greater than 750,000. On that same day,
24 Mateel sent identical 60-Day Notice letters to each defendant. Attached to the 60-Day Notice
25 Letters sent to each defendant was a summary of Proposition 65 that was prepared by
26 California's Office of Environmental Health Hazard Assessment. In addition, each 60-Day
27 Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service of
28 the 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety

1 Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis
2 for the action was also sent with each 60-Day Notice Letter. Factual information sufficient to
3 establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter Mateel
4 sent to the Attorney General.

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

6 JURISDICTION

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

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

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

22 FIRST CAUSE OF ACTION
23 (Claim for Injunctive Relief)

24 13. Plaintiff realleges and incorporates by reference into this First Cause of Action, as
25 if specifically set forth herein, paragraphs 1 through 12, inclusive.
26
27
28



Klamath

July 29, 2006

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

ATTORNEY GENERAL COPY
CONTAINS OFFICIAL
INFORMATION PURSUANT TO
EVIDENCE CODE §1040

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") give you notice that the private businesses on the attached service list has been, are, will be and threaten to be in violation of Cal. Health & Safety Code § 25249.6. Both this office and Mateel are private enforcers of Proposition 65, both may be contacted at the below listed address and telephone number, and I am a responsible individual at both Mateel and this office. The above referenced violations occur when California residents come into contact with shelf and drawer liner material and adhesive decorative covering. Both types of products are made from plastic (hereinafter "plastic coverings"). A list of specific examples of the specific types of these products is attached. The plastic these coverings are made from contains lead and lead compounds ("lead"), chemicals known to cause cancer, birth defects and other reproductive harm. California residents are exposed to lead when they handle these coverings while installing them, while using them, when coming into contact with them and when using dishes the food or lip surfaces of which come into contact with the coverings. Lead in the plastic is transferred from the plastic to their hands and to other parts of their skin or to their dishes or eating utensils. This lead is then absorbed through the skin, taken into cuts and abrasions, absorbed through mucous membranes, and transferred from the skin to the mouth via oral contact either directly with the plastic, from oral contact with the lead-contaminated skin or dishes and utensils, and when lead is transferred from contaminated skin and or dishes to cigarettes and food and the contaminated cigarettes and food are smoked and/or eaten. These lead exposures thus occur via the dermal absorption, subcutaneous, mucus membrane, ingestion and inhalation routes. The listed business did not and do not provide people with clear and reasonable warnings before they expose them to lead. These violations have occurred every day since at least June 29, 2003, and will continue every day until the lead is removed from the plastic used to make these coverings, or until clear and reasonable warnings are given. The above-referenced violations are alleged for occupational exposures as well as for consumer and environmental exposures. We do not, however, allege occupational exposure violations as to any plastic coverings made outside of California, except as to workplaces these companies themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the property of these businesses and in each of California's 58 counties.

Cordially,



William Verick

PRODUCT LIST

KITTRICH CORPORATION

CON-TACT BRAND SIMPLE ELEGANCE NON-ADHESIVE TEXTURED SHELF AND DRAWER LINER 5FT X 12IN #5T3100 WHITE HERRINGBONE UPC: 790444 058315 and 5T1100 WHITE-DIAMOND UPC: 790444 058117 and 5T1200 ALMOND DIAMONDS UPC: 790444 058124: These product descriptions pertains not only to the specific model of the products listed, but also for all units of all models of similar types of products.

TUFF-WARE, INC.

MAGIC COVER SELF ADHESIVE DECORATIVE COVERING 24FT x 18IN: This product description pertains not only to the specific model of the product listed, but also for all units of all models of similar types of products.

SERVICE LIST

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY
GENERAL
P.O. BOX 70550
OAKLAND CA 94612-0550

OFFICE OF THE CITY ATTORNEY
CITY OF OAKLAND
505 14TH ST 12TH FLOOR
OAKLAND, CA 94612

OFFICE OF THE CITY ATTORNEY
CITY OF SAN FRANCISCO
CITY HALL ROOM 206
400 VAN NESS
SAN FRANCISCO, CA 94102

OFFICE OF THE CITY ATTORNEY
CITY OF SACRAMENTO
980 9th Street, 10th Floor
SACRAMENTO, CA 95814

OFFICE OF THE CITY ATTORNEY
CITY OF SAN JOSE
151 W. MISSION ST.
SAN JOSE, CA 95110

OFFICE OF THE CITY ATTORNEY
CITY OF LOS ANGELES
200 N. MAIN ST.
LOS ANGELES, CA 90012

OFFICE OF THE CITY ATTORNEY
CITY OF SAN DIEGO
202 C ST. FLOOR 3
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF ALAMEDA
225 FALLON ST. #9
OAKLAND, CA 94612

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF ALPINE
P.O. BOX 248
MARKLEEVILLE, CA 96120

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF AMADOR
108 COURT ST. SUITE 202
JACKSON, CA 95642

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF BUTTE
25 COUNTY CENTER DR.
OROVILLE, CA 95965

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF CALAVERAS
GOVERNMENT CENTER
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF COLUSA
547 MARKET ST.
COLUSA, CA 95932

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF CONTRA COSTA
P.O. BOX 670
MARTINEZ, CA 94553

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF DEL NORTE
450 H ST #171
CRESCENT CITY, CA 95531

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF EL DORADO
515 MAIN ST.
PLACERVILLE, CA 95667

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF FRESNO
2220 TULARE ST #1000
FRESNO, CA 93721

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF GLENN
P.O. BOX 430
WILLOWS, CA 95988

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF HUMBOLDT
825 5TH ST.
EUREKA, CA 95501

COUNTY OF IMPERIAL
COURTHOUSE, FLOOR 2
939 W. MAIN ST
EL CENTRO, CA 92243

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF INYO
P.O. DRAWER D
INDEPENDENCE, CA 93526

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF KERN
1215 TRUXTUN AVE. FLOOR 4
BAKERSFIELD, CA 93301

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF KINGS
1400 W. LACEY BLVD.
HANFORD, CA 93230

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LAKE
255 N. FORBES ST # 424
LAKEPORT, CA 95453

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LASSEN
COUNTY ADMINISTRATION
BUILDING
707 NEVADA ST.
SUSANVILLE, CA 96130

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF LOS ANGELES
18000 CRIMINAL COURTS
BUILDING
210 W. TEMPLE ST.
LOS ANGELES, CA 90012

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MADERA
209 W. YOSEMITE AVE.
MADERA, CA 93637

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MARIN
HALL OF JUSTICE #183
SAN RAFAEL, CA 94903

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MARIPOSA
P.O. BOX 748
MARIPOSA, CA 95338

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MENDOCINO
301 S. STATE ST.
UKIAH, CA 95482

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MERCED
2222 M ST.
MERCED, CA 95340

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MODOC
P.O. BOX 1171
ALTURAS, CA 9610

OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF MONO
P.O. BOX 617
BRIDGEPORT, CA 93517

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MONTEREY
240 CHURCH ST.
P.O. BOX 180
SALINAS, CA 93902

COUNTY OF NAPA
931 PARKWAY MALL
P.O. BOX 720
NAPA, CA 94559-0720

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF NEVADA
COURTHOUSE ANNEX
NEVADA CITY, CA 95959

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ORANGE
400 CIVIC CENTER DR WEST
SANTA ANA, CA 92701

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLACER
11562 B AVE
AUBURN, CA 95603-2687

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLUMAS
P.O. BOX 10716
QUINCY, CA 95971

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE
4075 MAIN ST.
RIVERSIDE, CA 92501

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SACRAMENTO
P.O. BOX 749
SACRAMENTO, CA 95804

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BENITO
419 4TH ST
HOLLISTER, CA 95023

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BERNARDINO
316 MT. VIEW AVE.
SAN BERNARDINO, CA 92415-0004

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
101 W. BROADWAY #1300
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN FRANCISCO
850 BRYANT ST #322
SAN FRANCISCO, CA 94103

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN JOAQUIN
222 E. WEBER AVE #202
STOCKTON, CA 95202

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
REDWOOD CITY, CA 94063

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA
1112 SANTA BARBARA ST.
SANTA BARBARA, CA 93101-2008

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CLARA
70 W. HEDDING ST.
SAN JOSE, CA 95110

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CRUZ
701 OCEAN ST. #200
SANTA CRUZ, CA 95060

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SHASTA
1525 COURT ST.
REDDING, CA 96001

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SIERRA
P.O. BOX 457
DOWNIEVILLE, CA 95936

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
P.O. BOX 986
YREKA, CA 96097

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO
600 UNION AVE
FAIRFIELD, CA 94533

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
SANTA ROSA, CA 95403

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF STANISLAUS
1100 I ST. #200
MODESTO, CA 95354

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SUTTER
1160 CIVIC CENTER BLVD. #A
YUBA CITY, CA 95993

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TEHAMA
P.O. BOX 519
REDBLUFF, CA 96080

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TRINITY
P.O. BOX 310
WEAVERVILLE, CA 96093

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE
COURTHOUSE #224
VISALIA, CA 93291

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TUOLUMNE
2 S. GREEN ST.
SONORA, CA 95370

VENTURA COUNTY DISTRICT
ATTORNEY'S OFFICE
c/o GREGORY BROSE D.D.A.
4245 MARKET ST. #205
VENTURA, CA 93003

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
204 4TH ST
P.O. BOX 1247
WOODLAND, CA 95695

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

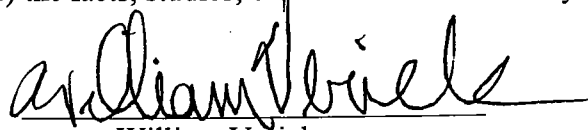
ROBERT FRIEDLAND, CEO
KITTRICH CORPORATION
14555 ALONDRA BLVD
LA MIRADA, CA 90638

STAN BOYER, PRESIDENT
TUFF-WARE INC
PO BOX 99
SEAGOVILLE, TX 75159-0099

CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings. I am the attorney for the noticing party. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the person(s) consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: June 29, 2006

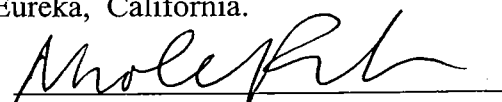

William Verick

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliances in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

CERTIFICATE OF SERVICE

I, Nicole Frank, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. On June 29, 2006 I caused the attached 60-DAY NOTICE LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified U.S. Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on June 29, 2006, at Eureka, California.


Nicole Frank