

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2007 MAR 27 AM 11:08
GORDON PARK - LI. CLERK
Deborah Steppe
BY: _____
DEPUTY CLERK

SUMMONS ISSUED

CASE MANAGEMENT CONFERENCE SET
AUG 24 2007 - 9:00 AM
DEPARTMENT 212

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Attorneys for Plaintiff,
9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

14 MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

CASE NO. CGC-07-461734

15 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

16 v.

18 COST PLUS, INC.

19 Defendant.

TOXIC TORT/ENVIRONMENTAL

22 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

23 INTRODUCTION

24
25 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
26 failure of defendants COST PLUS, INC., (hereinafter "Defendants"), to give clear and
27 reasonable warnings to those residents of California, who handle and use beverage dispensers

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

1 with brass valves that contain lead (Leaded Brass Beverage Dispensers). The bodies of these
2 Leaded Brass Beverage Dispensers are made from leaded brass, which contains lead and lead
3 compounds ("lead"), which are chemicals known to cause cancer, birth defects and other
4 reproductive harm. California residents are exposed to lead when they handle these Leaded
5 Brass Napkin Rings.

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

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

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

25 PARTIES

26 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
27 is a non-profit organization dedicated to, among other causes, the protection of the environment,

1 promotion of human health, environmental education, and consumer rights. Mateel is based in
2 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
3 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
4 action in the public interest pursuant to Health & Safety Code § 25249.7(d). Residents of
5 California are regularly exposed to lead and lead compounds from Leaded Brass Beverage
6 Dispensers manufactured, distributed or marketed by Defendants and are so exposed without a
7 clear and reasonable Proposition 65 warning.

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

14 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &
15 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
16 60-day Notice letter, dated August 7, 2006, which Mateel sent to California's Attorney General.
17 Substantially identical letters were sent to every District Attorney in the state, and to the City
18 Attorneys of every California city with a population greater than 750,000. On August 7, 2006,
19 Mateel sent to each Defendant a letter substantively identical to the Notice letter it sent on that
20 date to the Attorney General. Attached to the 60-Day Notice Letters sent to each defendant was
21 a summary of Proposition 65 that was prepared by California's Office of Environmental Health
22 Hazard Assessment. In addition, each 60-Day Notice Letter plaintiff sent was accompanied by a
23 Certificate of Service attesting to the service of the 60-Day Notice Letter on each entity which
24 received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of
25 Merit attesting to the reasonable and meritorious basis for the action was also sent with each 60-
26 Day Notice Letter. Factual information sufficient to establish the basis of the Certificate of Merit
27 was enclosed with the 60-Day Notice letters Mateel sent to the Attorney General on the two
dates.

1 individual to a chemical known to the State of California to cause cancer or birth defects must
2 first provide a clear and reasonable warning to such individual prior to the exposure.

3 14. Since at least 3 years prior to the filing of this complaint Defendants have
4 engaged in conduct that violates Health and Safety Code Section 25249.6 et seq. This conduct
5 includes knowingly and intentionally exposing to the above mentioned toxic chemicals, those
6 California residents who handle and use Leaded Brass Beverage Dispensers. The normally
7 intended use of Leaded Brass Beverage Dispensers causes exposure to lead and lead compounds,
8 which are chemicals known to the State of California to cause cancer, birth defects and other
9 reproductive harm. Defendants have not provided clear and reasonable warnings, within the
10 meaning of Health & Safety Code Sections 25249.6 and 25249.11.

11 16. At all times relevant to this action, Defendants knew that the Leaded Brass
12 Beverage Dispensers they manufactured, distributed or marketed were causing exposures to lead
13 and lead compounds. Defendants intended that residents of California handle and use Leaded
14 Brass Beverage Dispensers in such ways as would lead to significant exposures to these
15 chemicals.

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

21 SECOND CAUSE OF ACTION
22 (Claim for Civil Penalties)

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

25 19. By the above described acts, Defendants are liable and should be liable pursuant
26 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each
27 individual exposed without proper warning to lead and lead compounds from the handling or use
of Defendants' Leaded Brass Beverage Dispensers.

1 PRAYER FOR RELIEF

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

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

6 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil
7 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
8 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
9 Defendants' manufacturing, distributing or marketing of Leaded Brass Beverage Dispensers;

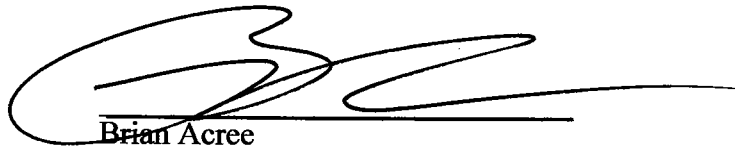
10 3. That Defendants be ordered to identify and locate each individual who purchased
11 Leaded Brass Beverage Dispensers and provide a warning to each such person that the Leaded
12 Brass Beverage Dispensers the person purchased will expose that person to chemicals known to
13 cause birth defects.

14 4. That, pursuant to Civil Procedure Code § 1021.5, Defendants be ordered to pay to
15 Plaintiff the attorneys fees and costs it incurred in bringing this enforcement action.

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

17
18 Dated: March 12, 2007

KLAMATH ENVIRONMENTAL LAW CENTER

19
20
21 

22 Brian Acree
23 Attorney for Plaintiff
24 Mateel Environmental Justice Foundation



Klamath

August 7, 2006

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

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") give you notice that the private businesses on the attached service list have 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 the brass valves or stopcocks on lemonade jars and water tanks (hereinafter "brass valved beverage dispensers"), and when they drink beverages that have flowed through the leaded brass valves/stopcocks. A list of specific examples of the specific types of products at issue is attached. The valves or stopcocks on these brass valved beverage dispensers are made from leaded brass, which contains lead and lead compounds ("lead"), which are chemicals known to cause cancer, birth defects and other reproductive harm. California residents are exposed to lead whenever they handle the brass valves/stopcocks, such as when serving beverages from these products, when washing them, or when drinking beverages that have flowed through the brass valves/stopcocks. Lead is transferred from the brass to peoples' hands and to other parts of their skin. 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 lead-contaminated skin, and when lead is transferred from contaminated skin to cigarettes and food and the contaminated cigarettes and food are smoked and/or eaten. Lead also leaches from the brass into the beverages that flow through the brass valves/stopcocks and is then drunk. These lead exposures thus occur via the dermal absorption, subcutaneous, mucus membrane, ingestion and inhalation routes. The listed businesses 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 August 7, 2003, and will continue every day until the lead is removed from the brass valves/stopcocks, 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 brass valved beverage dispenser 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 private businesses' property and in each of California's 58 counties.

Cordially,



William Verick

PRODUCT LIST

COST PLUS, INC.

RED SPECKLEWARE WATER TANK, ITEM # 370549

This product description pertains not only to the specific models of the products listed, but also for all units of all models of leaded brass serving ware.

LIFETIME BRANDS

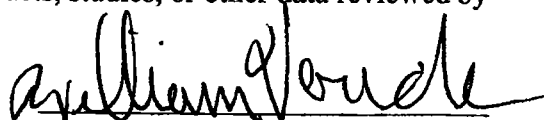
GEMCO LEMONADE JAR W/ BRASS SPIGOT

This product description pertains not only to the specific models of the products listed, but also for all units of all models of leaded brass serving ware.

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: August 7, 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. August 7, 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 August 7, 2006, at Eureka, California.


Nicole Frank

SERVICE LIST

EDWARD G. WEIL
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OFFICE OF THE ATTORNEY
GENERAL
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CITY HALL ROOM 206
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SAN FRANCISCO, CA 94102

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CITY OF SACRAMENTO
980 9th Street, 10th Floor
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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

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OAKLAND, CA 94612

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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

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547 MARKET ST.
COLUSA, CA 95932

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450 H ST #171
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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

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825 5TH ST.
EUREKA, CA 95501

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

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

OFFICE OF THE DISTRICT
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1400 W. LACEY BLVD.
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255 N. FORBES ST # 424
LAKEPORT, CA 95453

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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

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P.O. BOX 748
MARIPOSA, CA 95338

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ATTORNEY
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301 S. STATE ST.
UKIAH, CA 95482

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ATTORNEY
COUNTY OF MERCED
2222 M ST.
MERCED, CA 95340

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P.O. BOX 1171
ALTURAS, CA 9610

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COURTHOUSE ANNEX
NEVADA CITY, CA 95959

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STOCKTON, CA 95202

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COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

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SANTA BARBARA, CA 93101-2008

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1100 I ST. #200
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COURTHOUSE #224
VISALIA, CA 93291

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2 S. GREEN ST.
SONORA, CA 95370

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c/o GREGORY BROSE D.D.A.
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VENTURA, CA 93003

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P.O. BOX 1247
WOODLAND, CA 95695

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

BARRY J. FELD, CEO
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OAKLAND, CA 94607

JEFFREY SIEGEL, CEO
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