

**ENDORSED
FILED**
San Francisco County Superior Court

MAY 30 2007

GORDON PARK-LI, Clerk
BY: DEBORAH STEPPE
Deputy Clerk

SUMMONS ISSUED

CASE MANAGEMENT CONFERENCE SET

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11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO
14 (Unlimited Jurisdiction)

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

CASE NO. **CGC-07-463818**

17 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 v.

19 BELL FOUNDRY COMPANY,

20 Defendant.

21 _____ / TOXIC TORT/ENVIRONMENTAL

22
23 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

24 INTRODUCTION

25 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
26 failure of defendant BELL FOUNDRY COMPANY (hereinafter "Defendant"), to give clear and
27 reasonable warnings to those residents of California, who handle and use PVC exercise mats
28 (collectively hereinafter "Leaded Plastic Mats"). The handling and use of these products causes

1 those residents to be exposed to lead and lead compounds, lead acetate, lead phosphate, and lead
2 subacetate (hereinafter, collectively, "lead"). The types of products to which this Complaint
3 pertains are those types listed in the Proposition 65 60-Day Notice Letter that is attached to and
4 incorporated by reference into this Complaint. Lead is known to the State of California to cause
5 cancer, birth defects and male and female reproductive toxicity. Defendant manufactures,
6 distributes, and/or markets Leaded Plastic Mats. These products cause exposures to lead and lead
7 compounds, which are chemicals known to the State of California to cause cancer, birth defects
8 and other reproductive harm.

9 2. Defendant is a business that manufactures, markets, and/or distributes Leaded
10 Plastic Mats. Defendant intends that residents of California handle and use Leaded Plastic Mats
11 that Defendant manufactures, markets, and/or distributes. When these products are handled and
12 used in their normally intended manner, they expose people to lead. In spite of knowing that
13 residents of California were and are being exposed to these chemicals when they handle and use
14 Leaded Plastic Mats, Defendant did not and does not provide clear and reasonable warnings that
15 these products cause exposure to chemicals known to cause cancer, birth defects and other
16 reproductive harm.

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

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

28 PARTIES

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

10 6. Defendant is a person doing business within the meaning of Health & Safety
11 Code Section 25249.11. Defendant is a business that manufactures, distributes, and/or markets
12 Leaded Plastic Mats in California, including the City and County of San Francisco.
13 Manufacture, distribution and/or marketing of these products in the City and County of San
14 Francisco and/or to people who live in San Francisco, causes people to be exposed to lead and
15 lead compounds while they are physically present in the City and County of San Francisco.

16 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &
17 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
18 60-day Notice letter dated March 15, 2007, which Mateel sent to California's Attorney General.
19 Substantially identical letters were sent to every District Attorney in the state, and to the City
20 Attorneys of every California city with a population greater than 750,000. On that same day,
21 Mateel sent identical 60-Day Notice letters to Defendant. Attached to the 60-Day Notice Letters
22 sent to Defendant was a summary of Proposition 65 that was prepared by California's Office of
23 Environmental Health Hazard Assessment. In addition, each 60-Day Notice Letter plaintiff sent
24 was accompanied by a Certificate of Service attesting to the service of the 60-Day Notice Letter
25 on each entity which received it. Pursuant to California Health & Safety Code Section
26 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis for the action
27 was also sent with each 60-Day Notice Letter. Factual information sufficient to establish the
28 basis of the Certificate of Merit was enclosed with the 60-Day Notice letter Mateel sent to the

1 Attorney General.

2 9. Defendant is a business that employs more than ten people.

3 JURISDICTION

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

9 11. This Court also has jurisdiction over Defendant because Defendant is a business
10 that has sufficient minimum contacts in California and within the City and County of San
11 Francisco. Defendant intentionally avails itself of the California and San Francisco County
12 markets for Leaded Plastic Mats. It is thus consistent with traditional notions of fair play and
13 substantial justice for the San Francisco Superior Court to exercise jurisdiction over Defendant.

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

19 FIRST CAUSE OF ACTION
20 (Claim for Injunctive Relief)

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

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

26 15. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
27 that persons who, in the course of doing business, knowingly and intentionally expose any
28 individual to a chemical known to the State of California to cause cancer or birth defects must

1 first provide a clear and reasonable warning to such individual prior to the exposure.

2 16. Since at least March 15, 2004, Defendant has engaged in conduct that violates
3 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
4 intentionally exposing to the above mentioned toxic chemicals, those California residents who
5 handle and use Leaded Plastic Mats. The normally intended use of Leaded Plastic Mats causes
6 exposure to lead and lead compounds, which are chemicals known to the State of California to
7 cause cancer, birth defects and other reproductive harm. Defendant has not provided clear and
8 reasonable warnings, within the meaning of Health & Safety Code Sections 25249.6 and
9 25249.11.

10 17. At all times relevant to this action, Defendant knew that the Leaded Plastic Mats
11 they manufactured, distributed or marketed were causing exposures to lead and lead compounds.
12 Defendant intended that residents of California handle and use Leaded Plastic Mats in such ways
13 as would lead to significant exposures to these chemicals.

14 18. By the above described acts, Defendant has violated Cal. Health & Safety Code
15 § 25249.6 and is therefore subject to an injunction ordering them to stop violating Proposition 65
16 and requiring them to provide warnings to their past customers who purchased defendant's
17 products without receiving a clear and reasonable warning.

18 SECOND CAUSE OF ACTION
19 (Claim for Civil Penalties)

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

22 20. By the above described acts, Defendant is liable and should be liable pursuant to
23 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
24 exposed without proper warning to lead and lead compounds from the handling or use of
25 Defendant's Leaded Plastic Mats.

26 PRAYER FOR RELIEF

27 Wherefore, plaintiff prays for judgment against DEFENDANT, as follows:

28 1. Pursuant to the First Cause of Action, that Defendant be enjoined, restrained, and

1 ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
2 Code;

3 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
4 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
5 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
6 Defendant's manufacturing, distributing or marketing of Leaded Plastic Mats;

7 3. That Defendant be ordered to identify and locate each individual who purchased
8 Leaded Plastic Mats and provide a warning to each such person that the Leaded Plastic Mats the
9 person purchased will expose that person to chemicals known to cause birth defects.

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

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

13 Dated: May 24, 2007

KLAMATH ENVIRONMENTAL LAW CENTER

14
15
16 By 

17 William Verick
18 Attorney for Plaintiff
19 Mateel Environmental Justice Foundation
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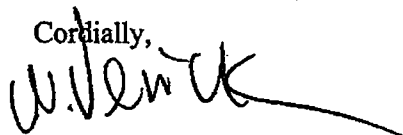


March 15, 2007

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 Bell Foundry Company has been, is, will be and threatens 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 plastic exercise mats. These mats are made from plastic (hereinafter "plastic exercise mats"). A specific example of this type of product is Bell Foundry Company's Exercise Mat SKU # 301241. The plastic these mats 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 mats while carrying them or while exercising on them. Lead in the plastic is transferred from the plastic to their 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 plastic, from oral contact 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. These lead exposures thus occur via the dermal absorption, subcutaneous, mucus membrane, ingestion and inhalation routes. Bell Foundry Company did not and does not provide people with clear and reasonable warnings before they expose them to lead. These violations have occurred every day since at least March 15, 2004, and will continue every day until the lead is removed from the plastic used to make these mats, 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 exercise mats made outside of California, except as to workplaces Bell Foundry Company itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Bell Foundry Company's property and in each of California's 58 counties.

Cordially,

William Verick

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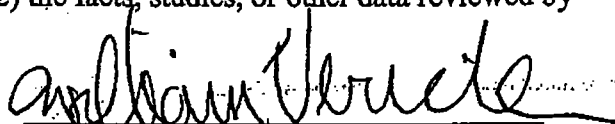
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CESAR CAPPELINI, CEO
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CERTIFICATE OF MERIT

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: March 15, 2007

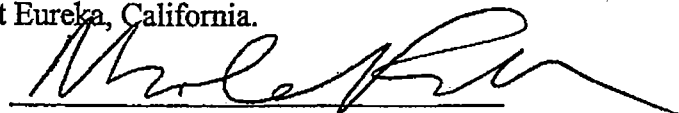

William Verick

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 March 15, 2007, 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 March 15, 2007, at Eureka, California.


Nicole Frank