

JUL 26 2007

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Deputy Clerk

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**CASE MANAGEMENT CONFERENCE SET**

DEC 28 2007 -9<sup>00</sup>AM

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**DEPARTMENT 212**

10 Attorneys for Plaintiff,  
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 (Unlimited Jurisdiction)

15  
16 MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION,

CASE NO. **CGC-07-465490**

17 Plaintiff,

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

18 v.

19 COSTCO WHOLESALE CORPORATION;  
20 HOME DEPOT U.S.A., INC.; SUR LA TABLE,  
INC.

TOXIC TORT/ENVIRONMENTAL

21 Defendants.

22 \_\_\_\_\_ /  
23  
24 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

INTRODUCTION

25 1. This Complaint seeks civil penalties and an injunction to remedy the continuing  
26 failure of defendants COSTCO WHOLESALE CORPORATION; HOME DEPOT U.S.A., INC.;

27  
28 COMPLAINT FOR INJUNCTION  
AND CIVIL PENALTIES

1 SUR LA TABLE, INC., (hereinafter "Defendants"), to give clear and reasonable warnings to  
2 those residents of California, who handle and use cookware with leaded brass handles (Brass  
3 Handled Cookware Products). The handles of these Brass Handled Cookware Products are made  
4 from leaded brass, which contains lead and lead compounds ("lead"), which are chemicals  
5 known to cause cancer, birth defects and other reproductive harm. California residents are  
6 exposed to lead when they handle these Brass Handled Cookware Products.

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

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

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

PARTIES

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

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

17           7.           Plaintiff brings this enforcement action against Defendants pursuant to Health &  
18 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a  
19 60-day Notice letter, dated May 10, 2007, which Mateel sent to California's Attorney General.  
20 Substantially identical letters were sent to every District Attorney in the state, and to the City  
21 Attorneys of every California city with a population greater than 750,000. On May 10, 2007,  
22 Mateel sent to each Defendant a letter substantively identical to the Notice letter it sent on that  
23 date to the Attorney General. Attached to the 60-Day Notice Letters sent to each defendant was  
24 a summary of Proposition 65 that was prepared by California's Office of Environmental Health  
25 Hazard Assessment. In addition, each 60-Day Notice Letter plaintiff sent was accompanied by a  
26 Certificate of Service attesting to the service of the 60-Day Notice Letter on each entity which

1 received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of  
2 Merit attesting to the reasonable and meritorious basis for the action was also sent with each  
3 60-Day Notice Letter. Factual information sufficient to establish the basis of the Certificate of  
4 Merit was enclosed with the 60-Day Notice letters Mateel sent to the Attorney General on the  
5 two dates.

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

7  
8 JURISDICTION

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

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

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

FIRST CAUSE OF ACTION  
(Claim for Injunctive Relief)

12. Plaintiff realleges and incorporates by reference into this First Cause of Action, as if specifically set forth herein, paragraphs 1 through 11, inclusive.

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

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

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

16. At all times relevant to this action, Defendants knew that the Brass Handled Cookware Products they manufactured, distributed or marketed were causing exposures to lead and lead compounds. Defendants intended that residents of California handle and use Brass Handled Cookware Products in such ways as would lead to significant exposures to these chemicals.

17. By the above described acts, Defendants have violated Cal. Health & Safety Code Section 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings

1 to their past customers who purchased defendants' products without receiving a clear and  
2 reasonable warning.

3  
4 SECOND CAUSE OF ACTION  
(Claim for Civil Penalties)

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

7 19. By the above described acts, Defendants are liable and should be liable pursuant  
8 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each  
9 individual exposed without proper warning to lead and lead compounds from the handling or use  
10 of Defendants' Brass Handled Cookware Products.

11  
12 PRAAYER FOR RELIEF

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

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

17 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil  
18 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section  
19 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of  
20 Defendants' manufacturing, distributing or marketing of Brass Handled Cookware Products;

21 3. Pursuant to the First Cause of Action, that Defendants be ordered to identify and  
22 locate each individual who purchased Brass Handled Cookware Products and provide a warning  
23 to each such person that the Brass Handled Cookware Products the person purchased will expose  
24 that person to chemicals known to cause birth defects.

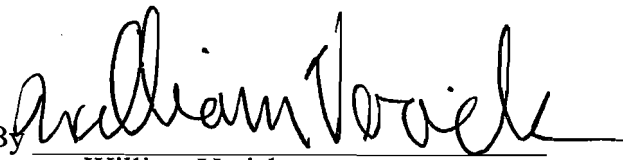
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4. Pursuant to Civil Procedure Code § 1021.5, that Defendants be ordered to pay to Plaintiff the attorneys fees and costs it incurred in bringing this enforcement action.

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

Dated: July 23, 2007

KLAMATH ENVIRONMENTAL LAW CENTER

By 

William Verick  
Attorney for Plaintiff Mateel Environmental Justice Foundation



# Klamath

ENVIRONMENTAL  
LAW CENTER

May 10, 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 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 handles on cookware these businesses market. A list of specific examples of the specific types of products at issue is attached. The handles on these frying pans, pots and pans (hereinafter "brass handled cookware") 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 brass handled cookware, such as when buying it, stocking shelves with it, while cooking with it, and while putting it away after washing it. Lead is transferred from the brass handles 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. 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 May 10, 2004, and will continue every day until the lead is removed from the brass handles, 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 handled cookware 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 companies' properties and in each of California's 58 counties.

Cordially,

William Verick



# SERVICE LIST

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ROBERT L. NARDELLI, CEO  
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ATLANTA, GA 30339

KATHY TIERNEY, CEO  
SUR LA TABLE, INC.  
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SEATTLE, WA 98108

BOB ULRICH, CEO  
TARGET CORPORATION  
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MINNEAPOLIS, MN 55403

EDWARD A. MUELLER, CEO  
WILLIAMS-SONOMA, INC.  
3250 VAN NESS AVE  
SAN FRANCISCO, CA 94109

## PRODUCT LIST

### **HOME DEPOT U.S.A., INC.**

RUFFONI SAUCEPAN WITH FLAT LID 6.25"; RUFFONI SAUCEPAN WITH FLAT LID 8"  
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 Saucepans.

### **COSTCO WHOLESALE**

RUFFONI COPPER OPERA 2.75 QT 7" SAUCEPAN, STYLE #1104-18; RUFFONI COPPER OPERA 2 QT 6.25" SAUCEPAN STYLE #1104-16 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of similar types of Saucepans.

### **SUR LA TABLE, INC.**

RUFFONI 10" COPPER CASSEROLE 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 Casseroles.

### **TARGET CORPORATION**

RUFFONI COPPER OPERA FRY PAN 10"; RUFFONI COPPER OPERA 8.75" 5 QT CASSEROLE STYLE #1103-22; RUFFONI COPPER OPERA 8.75" SAUTE PAN STYLE #1114-22; RUFFONI COPPER OPERA 8.75" FRYING PAN STYLE # 1106-22 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of similar types of Saucepans or Casserole Pans.

### **WILLIAMS-SONOMA, INC.**

RUFFONI POLENTA POT; RUFFONI HAMMERED COPPER FONDUEPOT; RUFFONI 4.75" COPPER STOCK POT #6231856; RUFFONI 4.75" COPPER STOCK POT #6231864  
These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of similar types of Saucepans or Casserole Pans.

**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: May 10, 2007

  
William Verick

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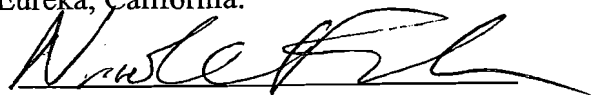
This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed 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 May 10, 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 May 10, 2007, at Eureka, California.

  
Nicole Frank