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MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

**ENDORSED  
FILED**  
San Francisco County Superior Court  
NOV 05 2007  
GORDON PARK-LI, Clerk  
BY: DEBORAH STEPPE  
Deputy Clerk

**CASE MANAGEMENT CONFERENCE SET**

**APR 04 2008 -9<sup>00</sup>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,  
15 Plaintiff,  
16 v.

CASE NO. **CGC-07-468856**

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

17 BRIEL-INDUSTRIA DE  
18 ELECTRODOMESTICOS SA; ELEKTRA  
SRL; FRANCIS! FRANCIS!  
19 INTERNATIONAL SRL; GAGGIA SPA;  
20 GENSACO, INC.; HOME DEPOT USA,  
INC.; ILLY CAFFE NORTH AMERICA,  
21 INC.; ILLY CAFFE SPA; LA PAVONI SPA;  
22 NUOVA SIMONELLI SPA; STARBUCKS  
CORPORATION; SUR LA TABLE, INC.  
23 Defendants.

TOXIC TORT/ENVIRONMENTAL

24 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

25 INTRODUCTION

26 1. This Complaint seeks civil penalties and an injunction to remedy the continuing  
27 failure of defendants BRIEL-INDUSTRIA DE ELECTRODOMESTICOS SA; ELEKTRA SRL;  
28 FRANCIS! FRANCIS! INTERNATIONAL SRL; GAGGIA SPA; GENSACO, INC.; HOME

1 DEPOT USA, INC.; ILLY CAFFE NORTH AMERICA, INC.; ILLY CAFFE SPA; LA  
2 PAVONI SPA; NUOVA SIMONELLI SPA; STARBUCKS CORPORATION; SUR LA  
3 TABLE, INC. (hereinafter "Defendants"), to give clear and reasonable warnings to those  
4 residents of California, who handle and use, and drink beverages made in espresso machines that  
5 utilize leaded brass components (hereinafter referred to as "espresso machines"), that handling  
6 and use of these espresso machines causes those residents to be exposed to lead and lead  
7 compounds, lead acetate, lead phosphate, and lead subacetate (hereinafter, collectively, "lead").  
8 The types of products to which this Complaint pertains are those types listed in the Product List  
9 appended to the Proposition 65 60-Day Notice Letter that is attached to and incorporated by  
10 reference into this Complaint. Lead is known to the State of California to cause cancer, birth  
11 defects and male and female reproductive toxicity. Defendants distribute, and/or market espresso  
12 machines. These products cause exposures to lead and lead compounds, which are chemicals  
13 known to the State of California to cause cancer, birth defects and other reproductive harm.

14 2. Defendants market, and/or distribute espresso machines. Defendants intend that  
15 residents of California handle, use and drink beverages made using the espresso machines that  
16 Defendants market, and/or distribute. When these products are handled and used in their  
17 normally intended manner and when people drink beverages made from water that has been  
18 heated in them, these espresso machines expose people to lead. In spite of knowing that residents  
19 of California were and are being exposed to these chemicals when they handle, use and drink  
20 beverages made using espresso machines, Defendants did not and do not provide clear and  
21 reasonable warnings that these products cause exposure to chemicals known to cause cancer,  
22 birth defects and other reproductive harm.

23 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7  
24 to compel Defendants to bring their business practices into compliance with section 25249.5 et  
25 seq. by providing a clear and reasonable warning to each individual who has been and who in the  
26 future may be exposed to the above mentioned toxic chemicals from the use of Defendants'  
27 products. Plaintiff seeks an order that defendant identify and locate each individual person who  
28 in the past has purchased espresso machines and to provide to each such purchaser a clear and

1 reasonable warning that the espresso machines will cause exposures to chemicals known to cause  
2 birth defects.

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

6 PARTIES

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

16 6. Defendants are persons doing business within the meaning of Health & Safety  
17 Code Section 25249.11. Defendants are businesses that distribute, and/or market espresso  
18 machines in California, including the City and County of San Francisco. Distribution and/or  
19 marketing of these products in the City and County of San Francisco and/or to people who live in  
20 San Francisco, causes people to be exposed to lead and lead compounds while they are physically  
21 present in the City and County of San Francisco.

22 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &  
23 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a  
24 60-day Notice letter, dated June 27, 2007, which Mateel sent to California's Attorney General.  
25 Substantively identical letters were sent to every District Attorney in the state, and to the City  
26 Attorneys of every California city with a population greater than 750,000, and to each defendant.  
27 Attached to the 60-Day Notice Letter sent to each defendant was a summary of Proposition 65  
28 that was prepared by California's Office of Environmental Health Hazard Assessment. In

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

7 8. Each defendant employs more than ten people.

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 6.6  
12 of the Health & Safety Code, which contains the statutes under which this action is brought, does  
13 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 espresso machines. It is thus consistent with traditional notions of fair play and substantial  
18 justice for the San Francisco Superior Court to exercise jurisdiction over Defendants.

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 imposed by statute.

24 FIRST CAUSE OF ACTION  
25 (Claim for Injunctive Relief)

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

28 13. The People of the State of California have declared by referendum under

1 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed  
2 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

3 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates  
4 that businesses that knowingly and intentionally expose any individual to a chemical known to  
5 the State of California to cause cancer or birth defects must first provide a clear and reasonable  
6 warning to such individual prior to the exposure.

7 15. Since at least June 27, 2004, Defendants have engaged in conduct that violates  
8 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and  
9 intentionally exposing to the above mentioned toxic chemicals, those California residents who  
10 handle, use or drink beverages made using espresso machines. The normally intended use of  
11 espresso machines causes exposure to lead and lead compounds, which are chemicals known to  
12 the State of California to cause cancer, birth defects and other reproductive harm. Defendants  
13 have not provided clear and reasonable warnings, within the meaning of Health & Safety Code  
14 Sections 25249.6 and 25249.11.

15 16. At all times relevant to this action, Defendants knew that the espresso machines  
16 they distributed or marketed were causing exposures to lead and lead compounds. Defendants  
17 intended that residents of California handle, use and drink beverages made using espresso  
18 machines in such ways as would lead to significant exposures to these chemicals.

19 17. By the above described acts, Defendants have violated Cal. Health & Safety Code  
20 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition  
21 65, to provide warnings to all present and future customers and to provide warnings to their past  
22 customers who purchased Defendants' products without receiving a clear and reasonable  
23 warning.

24 SECOND CAUSE OF ACTION  
25 (Claim for Civil Penalties)

26 18. Plaintiff realleges and incorporates by reference into this Second Cause of Action,  
27 as if specifically set forth herein, paragraphs 1 through 17, inclusive.

28 19. By the above described acts, Defendants are liable and should be liable pursuant

1 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each  
2 individual exposed without proper warning to lead and lead compounds from the handling, use  
3 of, or the drinking of beverages made using Defendants' espresso machines.

4 PRAYER FOR RELIEF

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

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

9 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil  
10 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section  
11 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of  
12 Defendant's distributing or marketing of espresso machines;

13 3. That Defendant be ordered to identify and locate each individual who purchased  
14 espresso machines and provide a warning to each such person that the espresso machines the  
15 person purchased will expose that person to chemicals known to cause birth defects.

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

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

19 Dated: October 31, 2007

20 KLAMATH ENVIRONMENTAL LAW  
21 CENTER

22 

23 By William Verick

24 Attorney for Plaintiff

25 Mateel Environmental Justice Foundation



# Klamath

ENVIRONMENTAL  
LAW CENTER

June 27, 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 leaded brass components (brass group heads, boilers, tubes, fittings, steam wands and porta filters, collectively hereinafter "leaded brass plumbing") in espresso machines and when they drink beverages, the water for which has flowed through the leaded brass plumbing in these machines. A list of specific examples of the specific types of products at issue is attached. The leaded brass plumbing through which water flows in these espresso machines is 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 leaded brass plumbing in these machines, such as when adjusting, maintaining or repairing the machines, or when drinking beverages (such as coffee drinks or tea) that are made from water that has flowed through the leaded brass plumbing. 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 leaded brass plumbing into the water that flows through this plumbing and is then made into drinks that are 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 June 27, 2004, and will continue every day until the lead is removed from the brass plumbing in these machines, 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 espresso machine 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

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



## PRODUCTS LIST

### ASCASO

Purchased at:

**HOME DEPOT U.S.A., INC.  
STARBUCKS CORPORATION**

ASCASO DREAM M.F. S/N# 034177 UPC: 786818 410131 SKU: UPC: 762111 714244 SKU: 242325; ASCASO ARC ESPRESSO COFFEE MACHINE BRUSHED COPPER UPC: 786818 410285 ASCASO DREAM M.F. UPC: 786818 410131 S/N# 034177 SKU: 242325 SECONDARY UPC: 762111 714244 This product description pertains not only to the specific models of the products listed, but also for all units of all models of brass espresso machines.

### BRIEL INDUSTRIA DE ELECTRODOMESTICOS, SA

Purchased at:

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

BRIEL MULTI-PRO SERIES MODEL# ES200 ATB-PG UPC: 786818 300043 This product description pertains not only to the specific model of the product listed, but also for all units of all models of brass espresso machines.

### ELEKTRA SRL

ELEKTRA "FAMILY" MICRO CASA SEMIAUTOMATICA This product description pertains not only to the specific model of the product listed, but also for all units of all models of brass espresso machines.

### FRANCIS!FRANCIS! INTERNATIONAL SRL

ILLYCAFFE SPA

ILLY CAFFE NORTH AMERICA, INC.

Purchased at:

**SUR LA TABLE, INC.**

FRANCIS FRANCIS X1 TYPE: FF1 X1 TRIO USA SERIAL # 0529 UPC: 733411 011005 This product description pertains not only to the specific model of the product listed, but also for all units of all models of brass espresso machines.

### GAGGIA SPA

Purchased at:

**BED BATH & BEYOND, INC.**

GAGGIA CLASSIC MODEL# 14101 SERIAL#: 1106182713 UPC: 693042 141017 This product description pertains not only to the specific model of the product listed, but also for all units of all models of brass espresso machines.

### GENSACO, INC.

GENSACO CAPUCIO SERIAL #: 08640 This product description pertains not only to the specific model of the product listed, but also for all units of all models of brass espresso machines.

### LA PAVONI SPA

LA PAVONI ROMANTICA MODEL: EPG-8 UPC: 725182 000197 This product description pertains not only to the specific model of the product listed, but also for all units of all models of brass espresso machines.

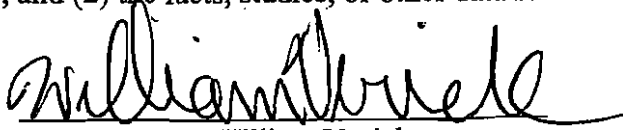
### NUOVA SIMONELLI SPA

NUOVA SIMONELLI OSCAR PROFESSIONAL S/N# 196812 This product description pertains not only to the specific model of the product listed, but also for all units of all models of brass espresso machines.

**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 27, 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.

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**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 27, 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 June 27, 2007, at Eureka, California.

  
Nicole Frank