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Attorneys for Plaintiff,
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION,

Plaintiff,

v.

WAL-MART STORES, INC.

Defendant.

CASE NO. **88C-10-501286**

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

INTRODUCTION

1. This Complaint seeks civil penalties and an injunction to remedy the continuing failure of defendant WAL-MART STORES, INC. (hereinafter "Wal-Mart" or "Defendant"), to give clear and reasonable warnings to those residents of California, who handle, use, and drink beverages made in Dualit espresso machines and coffee makers utilize leaded brass components (collectively hereinafter "espresso machines"). That handling and use of these espresso machines

SUMMONS ISSUED

FILED
San Francisco County Superior Court

JUL - 6 2010

CLERK OF THE COURT

BY: Elia RA
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

DEC - 3 2010 - 9⁰⁰ AM

DEPARTMENT 212

1 causes those residents to be exposed to lead and lead compounds, lead acetate, lead phosphate,
2 and lead subacetate (hereinafter, collectively, "lead"). The types of products to which this
3 Complaint pertains are those types listed in the Product List appended to the October 17, 2007
4 Proposition 65 Notice of Violation Letter that is attached to and incorporated by reference into
5 this Complaint. Lead is known to the State of California to cause cancer, birth defects and male
6 and female reproductive toxicity. Defendant distributes, and/or markets espresso machines.
7 These products cause exposures to lead and lead compounds, which are chemicals known to the
8 State of California to cause cancer, birth defects and other reproductive harm.

9 2. Defendant markets, and/or distributes espresso machines. Defendant intends that
10 residents of California handle, use and drink beverages made using the espresso machines that
11 Defendant markets, and/or distributes. When these products are handled and used in their
12 normally intended manner and when people drink beverages made from water that has been
13 heated in them, these espresso machines expose people to lead. In spite of knowing that residents
14 of California were and are being exposed to these chemicals when they handle, use and drink
15 beverages made using espresso machines, Defendant did not and does not provide clear and
16 reasonable warnings that these products cause exposure to chemicals known to cause cancer,
17 birth defects and other reproductive harm.

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

26 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
27 of Defendant to provide clear and reasonable warnings regarding exposure to chemicals known
28 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 espresso machines
9 manufactured, distributed or marketed by Defendant and are so exposed without a clear and
10 reasonable Proposition 65 warning.

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

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

1 of Merit was enclosed with the Notice of Violation letter Mateel sent to the Attorney General.
2 The aforementioned Notice of Violation alleges Wal-Mart violations as a result of sales of both
3 Dualit and Saeco espresso machines. This complaint, however, only alleges Wal-Mart violations
4 that pertain to Wal-Mart's sales of Dualit espresso machines.

5 8. Defendant employs more than ten people.

6 JURISDICTION

7 9. 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 10. This Court also has jurisdiction over Defendant because it is a businesses that has
13 sufficient minimum contacts in California and within the City and County of San Francisco.
14 Defendant intentionally availed itself of the California and San Francisco County markets for
15 Dualit espresso machines. It is thus consistent with traditional notions of fair play and
16 substantial justice for the San Francisco Superior Court to exercise jurisdiction over Defendant.

17 11. Venue is proper in this Court because Defendant markets its products in and
18 around San Francisco and thus causes 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 imposed by statute.

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

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

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

1 drinking of beverages made using Defendant's espresso machines.

2 PRAYER FOR RELIEF

3 Wherefore, plaintiff prays for judgment against Defendant, as follows:

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

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

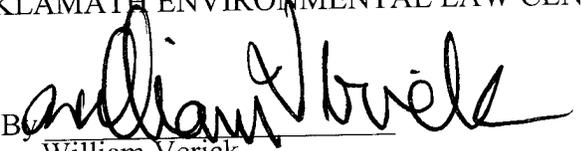
11 3. That Defendant be ordered to identify and locate each individual who purchased
12 espresso machines and provide a warning to each such person that the espresso machines the
13 person purchased will expose that person to chemicals known to cause birth defects.

14 4. That, pursuant to Civil Procedure Code § 1021.5, Defendant 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 Dated: June 22, 2010

KLAMATH ENVIRONMENTAL LAW CENTER

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20 William Verick
21 Attorney for Plaintiff
22 Mateel Environmental Justice Foundation
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28



Klamath

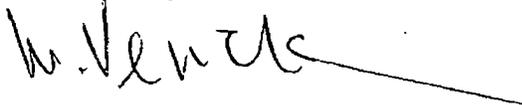
October 17, 2007

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 and coffee machines ("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 October 17, 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,



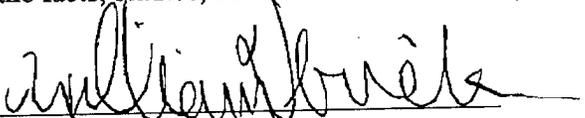
William Veriek

424 First Street, Eureka, CA 95501 • 707.268.8900 (phone) 707.268.8901 (fax)

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: October 17, 2007

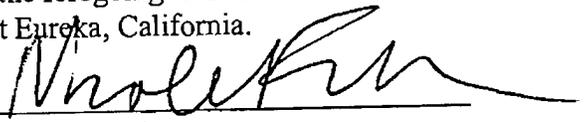

William Verick

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 October 17, 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 October 17, 2007, at Eureka, California.


Nicole Frank

PRODUCTS LIST

COSTCO WHOLESALE CORPORATION

PRIMA ESPRESSO MAKER V41006; GAGGIA BABY D MODEL# 11300 S/N# 1106205434 12/06; FARBERWARE MILLENIUM ESPRESSO MAKER W/ 15 BAR PUMP #FES15B; SAECO AROMA 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.

CMA SpA

EURO 2000 JUNIOR RANCILIO S 26 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.

DUALIT LTD

DUALIT ESPRESSO US CHROME MODEL# 84024 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.

GRUPPO CIMBALI SpA

LA CIMBALI ESPRESSO DOMUS TRONIC BLACK #893756 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.

J. C. PENNEY CORPORATION, INC

SAECO STAINLESS STEEL AROMA INOX PUMP ESPRESSO MACHINE 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.

LIFETIME BRANDS, INC.

FARBERWARE MILLENIUM ESPRESSO MAKER W/ 15 BAR PUMP #FES15B 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.

LINENS 'N THINGS, INC.

DUALIT ESPRESSO US MODEL 84024 S/N# 0410; ESPRESSIONE CAFE RETRO MODEL # 1385 ESPRESSO MACHINE 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.

RANCILIO MACCHINE PER CAFFE SpA / RANCILIO NORTH AMERICA, INC.

RANCILIO S 26; RANCILIO SYLVIA 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.

SAECO INTERNATIONAL GROUP SpA / SAECO USA, INC

SAECO STAINLESS STEEL AROMA INOX PUMP ESPRESSO MACHINE; GAGGIA BABY GAGGIA D MODEL #11300; SAECO AROMA 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.

SEARS, ROEBUCK AND CO.

ESPRESSIONE CAFE RETRO MODEL # 1385 ESPRESSO MACHINE; BRIEL DOMUS DUE #ES161AMB-TB 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.

TARGET CORPORATION

SAECO AROMA; ESPRESSIONE CAFE RETRO MODEL #1385 ESPRESSO MACHINE 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.

WAL-MART STORES, INC.

SAECO STAINLESS STEEL AROMA INOX PUMP ESPRESSO MACHINE; DUALIT ESPRESSO US CHROME MODEL# 84024 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.

WILLIAMS-SONOMA, INC.

ELEKTRA CASA SEMI AUTOMATICA CHROME; PAVONI 8CUP CHROME EUROPICOLA 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.

SERVICE LIST

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CITY HALL ROOM 206
400 VAN NESS
SAN FRANCISCO, CA 94102

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980 9th Street, 10th Floor
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151 W. MISSION ST.
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CITY OF LOS ANGELES
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LOS ANGELES, CA 90012

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MADERA, CA 93637

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MARIPOSA, CA 95338

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COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

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C.M.A. S.p. A.
VIA CONDOTTI BARDINI,
1- 31058 SUSEGANA (TREVISO)
ITALY

JAMES D SINEGAL, CEO
COSTCO WHOLESALE CORPORATION
999 LAKE DR
ISSAQUAH, WA 98027

PRESIDENT OR CEO
DUALIT LTD
COUTY OAK WAY
CRAWLEY
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RH11 7ST

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GRUPPO CMBALI SpA
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