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SAN FRANCISCO COUNTY
SUPERIOR COURT

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GORDON, JAMES M. CLERK

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CASEMANAGEMENT CONFERENCE SET

JUN 13 2008 -9⁰⁰AM

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 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

CASE NO. **CBC-08-471031**

17 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 v.

19 COGHLAN'S LTD.,

20 Defendant.

TOXIC TORT/ENVIRONMENTAL

21 _____ /
22 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

23 INTRODUCTION

24 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
25 failure of defendant COGHLAN'S LTD., to give clear and reasonable warnings to those
26 residents of California, who handle and use brass products (Leaded Brass Products). Aspects of
27 these Leaded Brass Products which are intended to be handled, manipulated or otherwise come
28 in contact with bodily surfaces, are made from leaded brass, which contains lead and lead

1 compounds ("lead"), which are chemicals known to cause cancer, birth defects and other
 2 reproductive harm. California residents are exposed to lead when they use these Leaded Brass
 3 Products in their intended manner.

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

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

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

23 PARTIES

24 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
 25 is a non-profit organization dedicated to, among other causes, the protection of the environment,
 26 promotion of human health, environmental education, and consumer rights. Mateel is based in
 27 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
 28 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement

1 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
2 California are regularly exposed to lead and lead compounds from Leaded Brass Products
3 manufactured, distributed or marketed by Defendant and are so exposed without a clear and
4 reasonable Proposition 65 warning.

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

11 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &
12 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
13 60-day Notice letter, dated November 7, 2007 which Mateel sent to California's Attorney
14 General. Substantially identical letters were sent to every District Attorney in the state, and to the
15 City Attorneys of every California city with a population greater than 750,000. On the same
16 date, Mateel sent to Defendant a letter substantively identical to the Notice letter it sent on that
17 date to the Attorney General. Attached to the 60-Day Notice Letters sent to Defendant was a
18 summary of Proposition 65 that was prepared by California's Office of Environmental Health
19 Hazard Assessment. In addition, each 60-Day Notice Letter plaintiff sent was accompanied by a
20 Certificate of Service attesting to the service of the 60-Day Notice Letter on each entity which
21 received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of
22 Merit attesting to the reasonable and meritorious basis for the action was also sent with each 60-
23 Day Notice Letter. Factual information sufficient to establish the basis of the Certificate of Merit
24 was enclosed with the 60-Day Notice letters Mateel sent to the Attorney General on the two
25 dates.

26 8. Defendant is a businesses that employs more than ten people.

27 JURISDICTION

28 9. The Court has jurisdiction over this action pursuant to California Health & Safety

1 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
2 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter
3 6.6 of the Health & Safety Code, which contains the statutes under which this action is brought,
4 does not grant jurisdiction to any other trial court.

5 10. This Court also has jurisdiction over Defendant because it is a business that has
6 sufficient minimum contacts in California and within the City and County of San Francisco.
7 Defendant intentionally availed itself of the California and San Francisco County markets for
8 Leaded Brass Products. It is thus consistent with traditional notions of fair play and substantial
9 justice for the San Francisco Superior Court to exercise jurisdiction over Defendant..

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

15 FIRST CAUSE OF ACTION
16 (Claim for Injunctive Relief)

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

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

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

26 15. Since at least three (3) years prior to the filing of this complaint Defendant has
27 engaged in conduct that violates Health and Safety Code Section 25249.6 et seq. This conduct
28 includes knowingly and intentionally exposing to the above mentioned toxic chemicals, those

1 California residents who handle and use Leaded Brass Products. The normally intended use of
2 Leaded Brass Products causes exposure to lead and lead compounds, which are chemicals known
3 to the State of California to cause cancer, birth defects and other reproductive harm. Defendant
4 has not provided clear and reasonable warnings, within the meaning of Health & Safety Code
5 Sections 25249.6 and 25249.11.

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

10 17. By the above described acts, Defendant has violated Cal. Health & Safety Code
11 § 25249.6 and is therefore subject to an injunction ordering it to stop violating Proposition 65, to
12 provide warnings to all present and future customers, and to provide warnings to their past
13 customers who purchased defendant's products without receiving a clear and reasonable
14 warning.

15 SECOND CAUSE OF ACTION
16 (Claim for Civil Penalties)

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

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

23 PRAYER FOR RELIEF

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

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

28 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil

1 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
2 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
3 Defendant's manufacturing, distributing or marketing of Leaded Brass Products;

4 3. That Defendant be ordered to identify and locate each individual who purchased
5 Leaded Brass Products and provide a warning to each such person that the Leaded Brass
6 Products the person purchased will expose that person to chemicals known to cause birth defects.

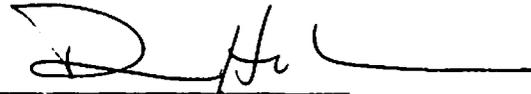
7 4. That, pursuant to Civil Procedure Code § 1021.5, Defendant be ordered to pay to
8 Plaintiff the attorneys fees and costs it incurred in bringing this enforcement action.

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

10 Dated: January 11, 2008

LAW OFFICES OF DAVID H. WILLIAMS

11
12
13 By



David H. Williams
Attorney for Plaintiff
Mateel Environmental Justice Foundation



Klamath

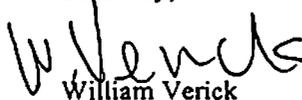
November 7, 2007

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 Coghlan's LTD ("Coghlan's") 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 products that are made of, or incorporate parts made of, brass and/or bronze (collectively "brass products"). A specific example of the products at issue is: OZARK TRAIL LANTERN LIGHTER #503A UPC: 056389 105034 This product description pertains not only to the specific model of the product listed, but also for all units of all models of the same types of products. The brass products are made in whole, or in part, 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 these brass products, such as when buying them, when handling them, or when using them. Lead is transferred from the brass products 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 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, mucous membrane, ingestion and inhalation routes. Coghlan's did not and does not provide people with clear and reasonable warnings before it exposes them to lead. These violations have occurred every day since at least November 7, 2004 and will continue every day until the lead is removed from the brass products, 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 products made outside of California, except as to workplaces Coghlan's itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Coghlan's property and in each of California's 58 counties.

Cordially,



William Verick

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

SERVICE LIST

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VENTURA, CA 93009
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SAN BERNARDINO, CA 92415-0004
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COUNTY OF YOLO
301 SECOND STREET
WOODLAND, CA 95695
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COUNTY GOVERNMENT CENTER #450
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P.O. BOX 457
DOWNIEVILLE, CA 95936
- NORMAN COGHILAN, PRESIDENT
COGHILAN'S LTD.
121 IRENE STREET
WINNIPEG, MANITOBA
R3T 4C7
CANADA

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: November 7, 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 November 7, 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 November 7, 2007, at Eureka, California.


Nicole Frank