

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 17 2008

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Deputy Clerk

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9 Attorneys for Plaintiff,
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

CASE MANAGEMENT CONFERENCE SET

AUG 15 2008 - 9⁰⁰ AM

DEPARTMENT 212

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
15 JUSTICE FOUNDATION,

CASE NO.

CGC-08-473399

16 Plaintiff,

17 v.

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 FRANKLIN FINANCIAL MANAGEMENT,
19 INC. d.b.a UPDATE INTERNATIONAL,

TOXIC TORT/ENVIRONMENTAL

20 Defendant.

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 FRANKLIN FINANCIAL MANAGEMENT, INC. d.b.a UPDATE
26 INTERNATIONAL (hereinafter "Franklin" or "Defendant"), to give clear and reasonable
27 warnings to those residents of California, who handle and use kitchen utensils such as spatulas
28 and ladles – which incorporate or utilize leaded plastic on the handles, (hereinafter referred to as

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

10 2. Defendant markets, and/or distributes Leaded Kitchen Utensils. Defendant intends
11 that residents of California handle and use Leaded Kitchen Utensils that Defendant markets,
12 and/or distributes. When these products are handled and used in their normally intended manner,
13 they expose people to lead. In spite of knowing that residents of California were and are being
14 exposed to these chemicals when they handle and use Leaded Kitchen Utensils, Defendant did
15 not and does not provide clear and reasonable warnings that these products cause exposure to
16 chemicals known to cause cancer, birth defects and other 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 Kitchen Utensils and to provide to each such purchaser a clear
23 and reasonable warning that the Leaded Kitchen Utensils will cause exposures to chemicals
24 known to cause birth defects.

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

1 PARTIES

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 Leaded Kitchen Utensils
9 manufactured, distributed or marketed by Defendants 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 businesses that distributes, and/or markets Leaded Kitchen
13 Utensils in California, including San Francisco County. Distribution and/or marketing of these
14 products in San Francisco County, and/or to people who live in San Francisco County, causes
15 people to be exposed to lead and lead compounds while they are physically present in San
16 Francisco County.

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 60-day Notice letter, dated December 5, 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 defendant.
22 Attached to the 60-Day Notice Letter sent to defendant was a summary of Proposition 65 that
23 was prepared by California's Office of Environmental Health Hazard Assessment. In addition,
24 each 60-Day Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to
25 the service of the 60-Day Notice Letter on each entity which received it. Pursuant to California
26 Health & Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and
27 meritorious basis for the action was also sent with each 60-Day Notice Letter. Factual
28

1 information sufficient to establish the basis of the Certificate of Merit was enclosed with the 60-
2 Day Notice letter Mateel sent to the Attorney General.

3 8. Defendant employs more than ten people.

4 JURISDICTION

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

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

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

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

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

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

27 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
28 that businesses that knowingly and intentionally expose any individual to a chemical known to

1 the State of California to cause cancer or birth defects must first provide a clear and reasonable
2 warning to such individual prior to the exposure.

3 15. Since at least December 5, 2004, Defendant has engaged in conduct that violates
4 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
5 intentionally exposing to the above mentioned toxic chemicals, those California residents who
6 handle and use Leaded Kitchen Utensils. The normally intended use of Leaded Kitchen Utensils
7 causes exposure to lead and lead compounds, which are chemicals known to the State of
8 California to cause cancer, birth defects and other reproductive harm. Defendant has not
9 provided clear and reasonable warnings, within the meaning of Health & Safety Code Sections
10 25249.6 and 25249.11.

11 16. At all times relevant to this action, Defendant knew that the Leaded Kitchen
12 Utensils it, distributed or marketed were causing exposures to lead and lead compounds.
13 Defendant intended that residents of California handle and use Leaded Kitchen Utensils in such
14 ways as would lead to significant exposures to these chemicals.

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

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

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

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

1 PRAYER FOR RELIEF

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

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

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

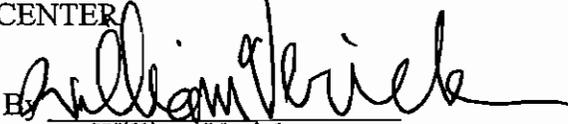
10 3. That Defendant be ordered to identify and locate each individual who purchased
11 Leaded Kitchen Utensils and provide a warning to each such person that the Leaded Kitchen
12 Utensils the person purchased will expose that person to chemicals known to cause birth defects.

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

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

16 Dated: March 12, 2008

17 KLAMATH ENVIRONMENTAL LAW
18 CENTER

19 

20 William Verick
21 Attorney for Plaintiff
22 Mateel Environmental Justice Foundation
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27
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Klamath

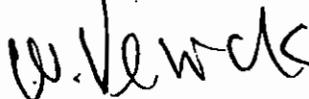
December 5, 2007

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 Franklin Financial Management, Inc. d.b.a. Update International (hereinafter "Franklin") 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 for both Mateel and this office. The above referenced violations occur when California residents come into contact with cooking utensils, the handles of which are coated with thermoplastic. Though a specific model or SKU or product number is given as an example, this notice pertains to all models, and all variations, of the specific type of product of which the named model is an example: UPDATE 2OZ LADLE #LOC-20 UPC: 755576 014967 The plastic on the handles of these cooking utensils contains high levels of lead and lead compounds ("lead"), chemicals known to cause cancer, birth defects, and other reproductive harm. Franklin makes or market these cooking utensils. People are exposed to lead at work or elsewhere when they use these cooking utensils and their skin thus comes into contact with the plastic in the handles. Lead is transferred from the cooking utensils to the hands of the people using these products. The lead then enters their bodies when it is absorbed directly through the skin, through mucous membranes, or through cuts and/or abrasions when they touch their hands to their mouths and other mucous membranes, or when they touch cigarettes or food and then smoke the cigarettes and/or ingest the food. These exposures thus occur via the dermal absorption, mucous membrane, subcutaneous, inhalation and ingestion routes. Franklin did not and does not provide people with clear and reasonable warnings before it exposes them to lead. The above referenced violations have occurred every day since at least December 5, 2004 and will continue every day until the lead is taken out of these products or until warnings are given. These 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 of these products made outside of California, except as to workplaces Franklin itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Franklin's property and in each of California's 58 counties.

Cordially,



William Verick

SERVICE LIST

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25 COUNTY CENTER DR.
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MODESTO, CA 95354

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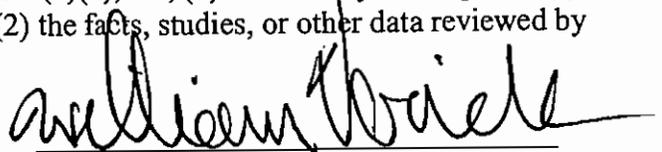
OFFICE OF THE DISTRICT ATTORNEY
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215 5TH ST.
MARYSVILLE, CA 95901

ALEC CHEUNG, CEO
FRANKLIN FINANCIAL MANAGEMENT, INC.
DBA UPDATE INTERNATIONAL
5801 S. BOYLE AVE
LOS ANGELES, CA 90058

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: December 5, 2007

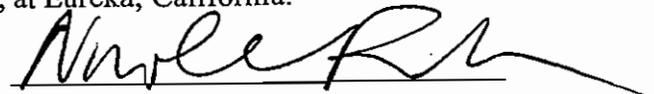

William Verick

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 December 5, 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 December 5, 2007, at Eureka, California.


Nicole Frank