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9 Attorneys for Plaintiff,
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

14 MATEEL ENVIRONMENTAL
15 JUSTICE FOUNDATION,

16 Plaintiff,

17 v.

18 COOPER TOOLS, INC.,

19 Defendant.
20 _____ /

CASE NO.

CGC-09-485713

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

21 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

22 INTRODUCTION

23 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
24 failure of defendant COOPER TOOLS, INC. (hereinafter "Defendant"), to give clear and
25 reasonable warnings to those residents of California, who handle and use galvanized chain,
26 which utilizes a galvanizing coating that contains lead, that handling and use of these products
27 causes those residents to be exposed to lead and lead compounds, lead acetate, lead phosphate,
28 and lead subacetate (hereinafter, collectively, "lead"). The types of products to which this

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 4 2009

GORDON PARKER, Clerk

BY: J. ASE MANAGEMENT CONFERENCE SE

AUG 7 2009 - 9:00 AM

DEPARTMENT 212

1 Complaint pertains are those types listed in the Product List appended to the Proposition 65
2 Notice of Violation Letter that is attached to and incorporated by reference into this Complaint.
3 Lead is known to the State of California to cause cancer, birth defects and male and female
4 reproductive toxicity. Defendant distributes, and/or markets galvanized chain. These products
5 cause exposures to lead and lead compounds, which are chemicals known to the State of
6 California to cause cancer, birth defects and other reproductive harm.

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

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

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

25 PARTIES

26 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
27 is a non-profit organization dedicated to, among other causes, the protection of the environment,
28 promotion of human health, environmental education, and consumer rights. Mateel is based in

1 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
2 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
3 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
4 California are regularly exposed to lead and lead compounds from galvanized chain
5 manufactured, distributed or marketed by Defendants and are so exposed without a clear and
6 reasonable Proposition 65 warning.

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

12 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &
13 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
14 60-day Notice letter, dated November 13, 2008, which Mateel sent to California's Attorney
15 General. Substantively identical letters were sent to every District Attorney in the state, and to the
16 City Attorneys of every California city with a population greater than 750,000, and to defendant.
17 Attached to the 60-Day Notice Letter sent to defendant was a summary of Proposition 65 that
18 was prepared by California's Office of Environmental Health Hazard Assessment. In addition,
19 each 60-Day Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to
20 the service of the 60-Day Notice Letter on each entity which received it. Pursuant to California
21 Health & Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and
22 meritorious basis for the action was also sent with each 60-Day Notice Letter. Factual
23 information sufficient to establish the basis of the Certificate of Merit was enclosed with the 60-
24 Day Notice letter Mateel sent to the Attorney General.

25 8. Defendant employs more than ten people.

26 JURISDICTION

27 9. The Court has jurisdiction over this action pursuant to California Health & Safety
28 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court

1 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
2 of the Health & Safety Code, which contains the statutes under which this action is brought, does
3 not grant jurisdiction to any other trial court.

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

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

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

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

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

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

25 15. Since at least November 13, 2005, Defendant has engaged in conduct that violates
26 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
27 intentionally exposing to the above mentioned toxic chemicals, those California residents who
28 handle and use galvanized chain. The normally intended use of galvanized chain causes

1 exposure to lead and lead compounds, which are chemicals known to the State of California to
2 cause cancer, birth defects and other reproductive harm. Defendant has not provided clear and
3 reasonable warnings, within the meaning of Health & Safety Code Sections 25249.6 and
4 25249.11.

5 16. At all times relevant to this action, Defendant knew that the galvanized chain it,
6 distributed or marketed was causing exposures to lead and lead compounds. Defendant intended
7 that residents of California handle and use galvanized chain in such ways as would lead to
8 significant exposures to these chemicals.

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

13 SECOND CAUSE OF ACTION
14 (Claim for Civil Penalties)

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

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

21 PRAYER FOR RELIEF

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

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

26 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
27 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
28 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of

1 Defendant's distributing or marketing of galvanized chain;

2 3. That Defendant be ordered to identify and locate each individual who purchased
3 galvanized chain and provide a warning to each such person that the galvanized chain the person
4 purchased will expose that person to chemicals known to cause birth defects.

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

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

8 Dated: February 26, 2009

9 KLAMATH ENVIRONMENTAL LAW
CENTER

10
11 By 

12 William Verick
13 Attorney for Plaintiff
14 Mateel Environmental Justice Foundation
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November 13, 2008

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 Cooper Tools, Inc. 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 galvanized chains (collectively hereinafter, "galvanized products"). Specific examples of the specific types of products at issue are GALVANIZED CHAIN SKU# 208-1669; GALVANIZED CHAIN SKU# 208-1636; GALVANIZED CHAIN #1208-1644; 12081636 PROOF COIL CHAIN 5/16"; 3/8" ROSE CLIP AND CHAIN. These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of galvanized chains. The surface zinc coating on these galvanized products contains lead as an intended constituent. Lead is a chemical known to cause cancer, birth defects and other reproductive harm. California residents are exposed to lead when they handle these galvanized products while installing them and while using them for their intended purpose. Lead is transferred from the leaded-zinc coating 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 galvanizing, from oral contact 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. Cooper Tools, Inc. 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 13, 2005, and will continue every day until the lead is removed from the galvanized 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 galvanized products made outside of California, except as to workplaces Cooper Tools, Inc. itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Cooper Tools, Inc.'s property and in each of California's 58 counties.

Cordially,

William Verick

SERVICE LIST

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P.O. DRAWER D
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ATTORNEY
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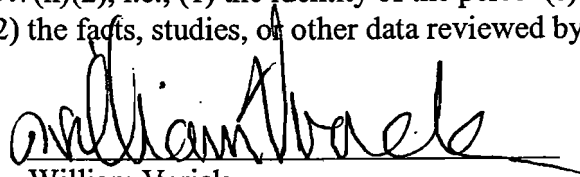
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COOPER TOOLS, INC.
600 TRAVIS, SUITE 5600
HOUSTON, TX 77002

GARY A MAASE, CEO
COOPER TOOLS, INC.
1000 LUFKIN RD
APEX, NC 27539

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 13, 2008


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 13, 2008, 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 13, 2008, at Eureka, California.


Nicole Frank