

SUMMONS ISSUED

FILED
San Francisco County Superior Court

MAY 29 2009

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Deputy Clerk

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OCT 30 2009 - 9⁰⁰ AM

DEPARTMENT 212

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,

CASE NO. **C6C-09-488856**

16 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

17 v.

18 CROSCILL, INC.,
19 Defendant.

TOXIC TORT/ENVIRONMENTAL

20 _____ /
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 CROSCILL, INC. (hereinafter "Defendant"), to give clear and reasonable
25 warnings to those residents of California, who handle and use home products made from leaded-
26 brass (such as toothbrush holders and lotion dispensers) (hereinafter "leaded brass home
27 products"), that handling and use of these products causes those residents to be exposed to lead
28 and lead compounds, lead acetate, lead phosphate, and lead subacetate (hereinafter, collectively,

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

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

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

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

26 PARTIES

27 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
28 is a non-profit organization dedicated to, among other causes, the protection of the environment,

1 intentionally exposing to the above mentioned toxic chemicals, those California residents who
2 handle and use leaded-brass home products. The normally intended use of leaded-brass home
3 products causes exposure to lead and lead compounds, which are chemicals known to the State of
4 California to cause cancer, birth defects and other reproductive harm. Defendant has not
5 provided clear and reasonable warnings, within the meaning of Health & Safety Code Sections
6 25249.6 and 25249.11.

7 16. At all times relevant to this action, Defendant knew that the leaded-brass home
8 products it, distributed or marketed were causing exposures to lead and lead compounds.
9 Defendant intended that residents of California handle and use leaded-brass home products in
10 such ways as would lead to significant exposures to these chemicals.

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

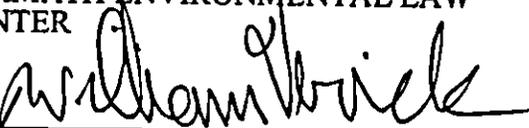
4 3. That Defendant be ordered to identify and locate each individual who purchased
5 leaded-brass home products and provide a warning to each such person that the leaded-brass
6 home products the person purchased will expose that person to chemicals known to cause birth
7 defects.

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

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

11 Dated: May 20, 2009

12 KLAMATH ENVIRONMENTAL LAW
13 CENTER

14 By 

15 William Verick
16 Attorney for Plaintiff
17 Mateel Environmental Justice Foundation
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23
24
25
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27
28



Klamath

ENVIRONMENTAL
LAW CENTER

December 4, 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 the private companies listed 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 for both Mateel and this office. The above-referenced violations occur when California residents come into contact with home furnishings, such as napkin rings and toothbrush holders, which are made, in part, of leaded-brass or bronze (hereinafter "leaded-brass home furnishings"). Specific examples of these types of products are listed in the enclosed Product List. 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. Brass and/or bronze parts of these leaded-brass home furnishings, which users of the products touch, contain high levels of lead and lead compounds ("lead"), chemicals known to cause cancer, birth defects, and other reproductive harm. These companies either make or market these leaded-brass home furnishings. People are exposed to lead when they use these leaded-brass home furnishings and their skin comes into contact with the leaded brass or bronze parts of the leaded-brass home furnishings. Lead is transferred from the leaded-brass home furnishings 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 or ingest the food. These exposures thus occur via the dermal absorption, mucous membrane, subcutaneous, inhalation and ingestion routes. These companies did not and do not provide people with clear and reasonable warnings before they expose them to lead. The above referenced violations have occurred every day since at least December 4, 2005, 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 manufactured 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 property of these companies and in each of California's 58 counties.

Cordially,

William Verick

SERVICE LIST

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ATTORNEY
COUNTY OF BUTTE
25 COUNTY CENTER DR.
OROVILLE, CA 95965

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ATTORNEY
COUNTY OF CALAVERAS
GOVERNMENT CENTER
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249

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COLUSA, CA 95932

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EL CENTRO, CA 92243

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P.O. DRAWER D
INDEPENDENCE, CA 93526

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253 N. FORBES ST # 424
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COUNTY OF LOS ANGELES
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BUILDING
210 W. TEMPLE ST.
LOS ANGELES, CA 90012

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MADERA, CA 93637

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PO BOX 1000
UKIAH, CA 95482

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11562 B AVE
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COUNTY OF PLUMAS
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QUINCY, CA 95971

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RIVERSIDE, CA 92501

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COUNTY GOVERNMENT CENTER #450
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SANTA CRUZ, CA 95060

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REDDING, CA 96001

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600 UNION AVE
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SANTA ROSA, CA 95403

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COUNTY OF STANISLAUS
1100 I ST. #200
MODESTO, CA 95354

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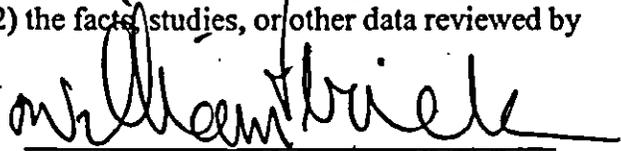
DOUGLAS KAHN, CEO
CROSCILL, INC
261 5TH AVENUE
NEW YORK, NY 10016

PRESIDENT OR CEO
GLENOLT, LLC
BARRY LEONARD, MANAGER
1 LINDE DRIVE
GOLDSBORO, NC 27530

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 4, 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 December 4, 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 December 4, 2008, at Eureka, California.


Nicole Frank

PRODUCTS LIST

GLENOIT LLC

KEMP & BEATLEY NAPKIN RING BEADED ELEGANCE N/R UPC CODE: 023967 129812; TROPICAL PARADISE NAPKIN RING BRASS UPC CODE: 023967 037049 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of brass household items.

CROSCILL, INC.

SAXONY TOOTH BRUSH HOLDER CPTB 0348 TBH 05 GOLD UPC CODE:083013 628447; SAXONY CPLD 0348 LTD 05 GOLD LOTION DISPENSER UPC CODE: 083013628409; These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of brass household items.