

SUMMONS ISSUED
FILED
San Francisco County Superior Court

MAY 29 2009

GORDON PARK-LI, Clerk

BY: Elias Butt
Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

OCT 30 2009 - 9⁰⁰ AM

DEPARTMENT 212

16 Attorneys for Plaintiff,
17 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SAN FRANCISCO
20 (Unlimited Jurisdiction)

21 MATEEL ENVIRONMENTAL
22 JUSTICE FOUNDATION,

CASE NO. **CGC-09-488864**

23 Plaintiff,

24 COMPLAINT FOR INJUNCTIVE RELIEF
25 AND CIVIL PENALTIES

26 v.

27 KOHL'S DEPARTMENT STORES, INC.,

TOXIC TORT/ENVIRONMENTAL

28 Defendant.

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

INTRODUCTION

1. This Complaint seeks civil penalties and an injunction to remedy the continuing failure of defendant KOHL'S DEPARTMENT STORES, INC. (hereinafter "Defendant"), to give clear and reasonable warnings to those residents of California, who handle and use lamps, votive candle holders and candle holders made from glass pieces that are connected using leaded solder or leaded came (hereinafter "leaded glass lamps"), that handling and use of these products causes those residents to be exposed to lead and lead compounds, lead acetate, lead phosphate,

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

8 2. Defendant markets, and/or distributes leaded glass lamps. Defendant intends that
9 residents of California handle and use leaded glass lamps that Defendant markets, and/or
10 distributes. When these products are handled and used in their normally intended manner, they
11 expose people to lead. In spite of knowing that residents of California were and are being
12 exposed to these chemicals when they handle and use leaded glass lamps, Defendant did not and
13 does not provide clear and reasonable warnings that these products cause exposure to chemicals
14 known to cause cancer, birth defects and other 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 glass lamps and to provide to each such purchaser a clear and
21 reasonable warning that the leaded glass lamps will cause exposures to chemicals known to cause
22 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 promotion of human health, environmental education, and consumer rights. Mateel is based in
2 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
3 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
4 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
5 California are regularly exposed to lead and lead compounds from leaded glass lamps
6 manufactured, distributed or marketed by Defendant and are so exposed without a clear and
7 reasonable Proposition 65 warning.

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

13 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &
14 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
15 Notice of Violation Letter, dated December 18, 2008, which Mateel sent to California's Attorney
16 General. Substantively identical letters were sent to every District Attorney in the state, and to the
17 City Attorneys of every California city with a population greater than 750,000, and to defendant.

18 Attached to the Notice of Violation Letter sent to defendant was a summary of Proposition 65
19 that was prepared by California's Office of Environmental Health Hazard Assessment. In
20 addition, each Notice of Violation Letter plaintiff sent was accompanied by a Certificate of
21 Service attesting to the service of the Notice of Violation Letter on each entity which received it.
22 Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of Merit attesting
23 to the reasonable and meritorious basis for the action was also sent with each Notice of Violation
24 Letter. Factual information sufficient to establish the basis of the Certificate of Merit was
25 enclosed with the Notice of Violation Letter Mateel sent to the Attorney General.

26 8. Defendant 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 6.6
3 of the Health & Safety Code, which contains the statutes under which this action is brought, does
4 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 glass lamps. 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 County and thus causes people to be exposed to lead and lead compounds
12 while those people are physically present in San Francisco County. Liability for Plaintiff's
13 causes of action, or some parts thereof, has accordingly arisen in San Francisco County during
14 the times relevant to this Complaint and Plaintiff seeks civil penalties imposed by statute.

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 businesses that knowingly and intentionally expose any individual to a chemical known to
24 the State of California to cause cancer or birth defects must first provide a clear and reasonable
25 warning to such individual prior to the exposure.

26 15. Since at least December 18, 2005, Defendant has engaged in conduct that violates
27 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
28 intentionally exposing to the above mentioned toxic chemicals, those California residents who

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

6 16. At all times relevant to this action, Defendant knew that the leaded glass lamps it,
7 distributed or marketed were causing exposures to lead and lead compounds. Defendant
8 intended that residents of California handle and use leaded glass lamps in such ways as would
9 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 its past
13 customers who purchased defendant's products without receiving a clear and reasonable warning.

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

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

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

22 PRAYER FOR RELIEF

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

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

27 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
28 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section

1 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
2 Defendant's distributing or marketing of leaded glass lamps;

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

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

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

9 Dated: May 20, 2009

10 KLAMATH ENVIRONMENTAL LAW
11 CENTER

12 By 

13 William Verick
14 Attorney for Plaintiff
15 Mateel Environmental Justice Foundation
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Klamath

ENVIRONMENTAL
LAW CENTER

December 18, 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 Kohl's Department Stores, Inc. (hereinafter "Kohl'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 leaded glass lamps and/or candle holders (collectively hereinafter "leaded glass lamps"). Specific examples of the specific types of products at issue are: KOHL'S NATURAL LIVING CANDLE HOLDER STYLE# 389407UPC CODE: 400891 939814; KOHL'S NATURAL LIVING TEALIGHT HOLDER STYLE #389707A UPC CODE: 400891 939906. 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. The solder, came, and other parts used to manufacture these leaded glass lamps 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 when they assemble, handle, clean, or otherwise use these products. Lead is transferred from the 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 product, 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. Kohl's did not and does not provide people with clear and reasonable warnings before they expose them to lead. These violations have occurred every day since at least December 18, 2005, and will continue every day until the lead is removed from the leaded stained glass lamps, 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 leaded glass lamps made outside of California, except as to workplaces Kohl's itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Kohl'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)

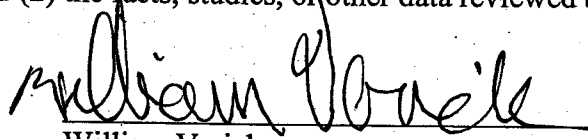
SERVICE LIST

EDWARD G. WEIL DEPUTY ATTORNEY GENERAL OFFICE OF THE ATTORNEY GENERAL P.O. BOX 70550 OAKLAND CA 94612-0550	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF GLENN P.O. BOX 430 WILLOWS, CA 95988	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTEREY 240 CHURCH STREET P.O. BOX 1131 SALINAS, CA 93902	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SISKIYOU P.O. BOX 986 YREKA, CA 96097
OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 505 14TH ST 12TH FLOOR OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 825 5TH ST. EUREKA, CA 95501	COUNTY OF NAPA 931 PARKWAY MALL P.O. BOX 720 NAPA, CA 94559-0720	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533
OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 206 400 VAN NESS SAN FRANCISCO, CA 94102	COUNTY OF IMPERIAL COURTHOUSE, FLOOR 2 939 W. MAIN ST EL CENTRO, CA 92243	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA COURTHOUSE ANNEX NEVADA CITY, CA 95959	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SONOMA 600 ADMINISTRATION DR. #212J SANTA ROSA, CA 95403
OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO PO BOX 1948 SACRAMENTO, CA 95812-1948	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDEPENDENCE, CA 93526	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 401 CIVIC CENTER DR WEST SANTA ANA, CA 92701	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 1100 I ST. #200 MODESTO, CA 95354
OFFICE OF THE CITY ATTORNEY CITY OF SAN JOSE 200 EAST SANTA CLARA STREET SAN JOSE, CA 95113	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KERN 1215 TRUXTUN AVE. FLOOR 4 BAKERSFIELD, CA 93301	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLACER 11562 B AVE AUBURN, CA 95603-2687	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SUTTER 1160 CIVIC CENTER BLVD. #A YUBA CITY, CA 95993
OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 200 N. MAIN ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LACEY BLVD. HANFORD, CA 93230	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS 520 MAIN STREET #404 QUINCY, CA 95971	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TEHAMA P.O. BOX 519 REDBLUFF, CA 96080
OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO CONSUMER & ENVIRONMENTAL PROTECTION 1200 THIRD AVENUE, SUITE 700 SAN DIEGO, CA 92101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 4075 MAIN ST. RIVERSIDE, CA 92501	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SACRAMENTO 901 G STREET SACRAMENTO, CA 95814	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE #224 VISALLA, CA 93291
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 1225 FALLON STREET ROOM 900 OAKLAND, CA 94612	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST HOLLISTER, CA 95023	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BERNARDINO 316 MT. VIEW AVE. SAN BERNARDINO, CA 92415-0004	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 2 S. GREEN ST. SONORA, CA 95370
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALPINE P.O. BOX 248 MARKLEEVILLE, CA 96120	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN 220 SOUTH LASSEN ST. STE 8 SUSANVILLE, CA 96130	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 330 W. BROADWAY SAN DIEGO, CA 92101	VENTURA COUNTY DISTRICT ATTORNEY'S OFFICE 800 SOUTH VICTORIA AVE VENTURA, CA 93009
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 708 COURT STREET JACKSON, CA 95642	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES 18000 CRIMINAL COURTS BUILDING 210 W. TEMPLE ST. LOS ANGELES, CA 90012	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 850 BRYANT ST #322 SAN FRANCISCO, CA 94103	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YOLO 301 SECOND STREET WOODLAND, CA 95695
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 25 COUNTY CENTER DR. OROVILLE, CA 95965	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 730 MARIPOSA, CA 95338	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 215 5TH ST. MARYSVILLE, CA 95901
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA95249	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADERA 209 W. YOSEMITE AVE. MADERA, CA 93637	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SHASTA 1525 COURT ST. REDDING, CA 96001	R LAWRENCE MONTGOMERY, CEO KOHL'S DEPARTMENT STORES, INC. N56 W17000 RIDGEWOOD DR MENOMONEE FALLS, WI 53051
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 547 MARKET STREET COLUSA, CA 95932	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIN HALL OF JUSTICE #183 SAN RAFAEL, CA 94903	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 457 DOWNIEVILLE, CA 95936	R LAWRENCE MONTGOMERY, CEO KOHL'S DEPARTMENT STORES, INC. 6360 N. LAKE DRIVE WHITEFISH BAY, WI 53217
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 670 MARTINEZ, CA 94553	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MENDOCINO PO BOX 1000 UKIAH, CA 95482		
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL NORTE 450 H ST #171 CRESCENT CITY, CA 95531	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 2222 M ST. MERCED, CA 95340		
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF EL DORADO 515 MAIN ST. PLACERVILLE, CA 95667	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MODOC 204 SOUTH COURT STREET ALTURAS, CA 96101		
OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 2220 TULARE ST #1000 FRESNO, CA 93721	OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NUBIA P.O. BOX 617 BRIDGEPORT, CA 93517		

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 18, 2008

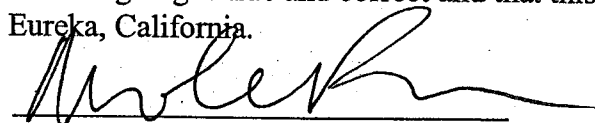

William Verick

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 18, 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 18, 2008, at Eureka, California.


Nicole Frank