

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2009 MAR 27 AM 9:01

GORDON PARK - LL CLERK

BY: D. STEFF  
DEPUTY CLERK

**CASE MANAGEMENT CONFERENCE SET**

AUG 28 2009 - 9:00 AM

DEPARTMENT 212

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9 Attorneys for Plaintiff,  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

13 MATEEL ENVIRONMENTAL  
14 JUSTICE FOUNDATION,

CASE NO. **CGC-09-486680**

15 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

16 v.

17 SAFEWAY, INC.; and CRYSTAL CLEAR  
18 INDUSTRIES,

TOXIC TORT/ENVIRONMENTAL

19 Defendants.

20 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

21 INTRODUCTION

22 1. This Complaint seeks civil penalties and an injunction to remedy the continuing  
23 failure of defendants SAFEWAY, INC.; and CRYSTAL CLEAR INDUSTRIES (hereinafter  
24 "Defendants"), to give clear and reasonable warnings to those residents of California, who handle  
25 and use, and drink beverages stored or contained in leaded crystal glassware such as leaded  
26 crystal wine glasses, highball glasses, decanters, carafes, and juice glasses (hereinafter referred to  
27 as "leaded crystal"), that handling and use of and drinking from, or eating food served from,  
28

1 leaded crystal causes those residents to be exposed to lead and lead compounds, lead acetate, lead  
2 phosphate, and lead subacetate (hereinafter, collectively, "lead"). The types of products to which  
3 this Complaint pertains are those types listed in the Product List appended to the Proposition 65  
4 Notice of Violation Letter that is attached to and incorporated by reference into this Complaint.  
5 Lead is known to the State of California to cause cancer, birth defects and male and female  
6 reproductive toxicity. Defendants distribute, and/or market leaded crystal. These products cause  
7 exposures to lead and lead compounds, which are chemicals known to the State of California to  
8 cause cancer, birth defects and other reproductive harm.

9         2. Defendants market, and/or distribute leaded crystal. Defendants intend that  
10 residents of California handle, use and drink beverages stored or contained in, or served from,  
11 the leaded crystal that Defendants market, and/or distribute. When these products are handled  
12 and used in their normally intended manner and when people drink beverages that has been  
13 stored in or contained in leaded crystal the leaded crystal exposes people to lead. In spite of  
14 knowing that residents of California were and are being exposed to this toxic heavy metal when  
15 they handle, use and drink beverages contained or stored in, or served from, leaded crystal,  
16 Defendants did not and do not provide clear and reasonable warnings that these products cause  
17 exposure to chemicals known to cause cancer, birth defects and other reproductive harm.

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

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

PARTIES

1  
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 crystal marketed by  
9 Defendants and are so exposed without a clear and reasonable Proposition 65 warning.

10           6.       Defendants are persons doing business within the meaning of Health & Safety  
11 Code Section 25249.11. Defendants are businesses that distribute, and/or market leaded crystal in  
12 California, including the City and County of San Francisco. Distribution and/or marketing of  
13 these products in the City and County of San Francisco and/or to people who live in San  
14 Francisco, causes people to be exposed to lead and lead compounds while they are physically  
15 present in the City and County of San Francisco.

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





1 PRAYER FOR RELIEF

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

3 1. Pursuant to the First Cause of Action, that Defendants be enjoined, restrained,  
4 and 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 Defendants 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 crystal;

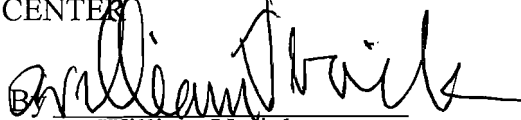
10 3. That Defendant be ordered to identify and locate each individual who purchased  
11 leaded crystal and provide a warning to each such person that the leaded crystal the person  
12 purchased will expose that person to chemicals known to cause birth defects.

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 23, 2009

17 KLAMATH ENVIRONMENTAL LAW  
18 CENTER

19 

20 William Verick  
21 Attorney for Plaintiff  
22 Mateel Environmental Justice Foundation  
23  
24  
25  
26  
27  
28



# 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") hereby give you notice that the private businesses listed on the attached service list are, have been, will be and threaten to be in violation of Cal. Health & Safety Code §25249.6. This office and Mateel are both private enforcers of Proposition 65, both organizations may be reached at the below-listed address and telephone number, I may be considered a "responsible individual" at both organizations, and I may be contacted at the same address and telephone number. The above referenced violations occur when the listed companies market leaded crystal vessels such as decanters, tumblers, wine glasses, champagne flutes, and cocktail glasses (as for martinis) (collectively hereinafter "leaded crystal vessels"). 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 on the Product List is an example. Handling of, contact with, drinking from, and cleaning up broken glass from leaded crystal vessels exposes people to lead and lead compounds, lead phosphate, lead acetate, and lead subacetate (hereinafter, collectively, "lead"). Lead leaches from the vessel into the food or beverage stored in, or served from, the vessel. The food or beverage is then consumed and the accompanying lead ingested. These exposures (and resulting violations) occur occupationally, environmentally, and as the result of the sale of consumer products and/or services. In occupational settings, the type of work that is done during which the above-referenced exposures occur is handling the leaded crystal vessels, cleaning up broken glass from them, and drinking from them, such as at wine tastings and office parties. These exposures occur via the dermal absorption, inhalation, ingestion, and subcutaneous routes. These violations have occurred every day since at least December 18, 2005, and will continue every day until reasonable warnings are given to those people exposed or until the listed companies stop selling leaded crystal. 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 stained glass lamps made outside of California, except as to workplaces the listed companies themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the listed private businesses' properties and in each of California's 58 counties.

Cordially,

William Verick

## SERVICE LIST

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CITY HALL ROOM 206  
400 VAN NESS  
SAN FRANCISCO, CA 94102

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200 N. MAIN ST.  
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708 COURT STREET  
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COUNTY OF BUTTE  
25 COUNTY CENTER DR.  
OROVILLE, CA 95965

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ATTORNEY  
COUNTY OF CALAVERAS  
GOVERNMENT CENTER  
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547 MARKET STREET  
COLUSA, CA 95932

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P.O. BOX 670  
MARTINEZ, CA 94553

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515 MAIN ST.  
PLACERVILLE, CA 95667

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INDEPENDENCE, CA 93526

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255 N. FORBES ST # 424  
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ATTORNEY  
COUNTY OF LASSEN  
220 SOUTH LASSEN ST. STE 8  
SUSANVILLE, CA 96130

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ATTORNEY  
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SAN RAFAEL, CA 94903

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ATTORNEY  
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UKIAH, CA 95482

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ATTORNEY  
COUNTY OF MERCED  
2222 M ST.  
MERCED, CA 95340

OFFICE OF THE DISTRICT  
ATTORNEY  
COUNTY OF MODOC  
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ALTURAS, CA 96101

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BRIDGEPORT, CA 93517

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240 CHURCH STREET  
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SALINAS, CA 93902

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P.O. BOX 720  
NAPA, CA 94559-0720

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COURTHOUSE ANNEX  
NEVADA CITY, CA 95959

OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF ORANGE  
401 CIVIC CENTER DR WEST  
SANTA ANA, CA 92701

OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF PLACER  
11562 B AVE  
AUBURN, CA 95603-2687

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COUNTY OF PLUMAS  
520 MAIN STREET #404  
QUINCY, CA 95971

OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF RIVERSIDE  
4075 MAIN ST.  
RIVERSIDE, CA 92501

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SAN FRANCISCO, CA 94103

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222 E. WEBER AVE #202  
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COUNTY GOVERNMENT CENTER #450  
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OFFICE OF THE DISTRICT ATTORNEY  
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PRESIDENT OR CEO  
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2 BERGEN TURNPIKE  
RIDGEFIELD PARK, NJ 07660

PRESIDENT OR CEO  
CRYSTAL CLEAR INDUSTRIES, INC.  
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KOHLS DEPARTMENT STORES, INC.  
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R LAWRENCE MONTGOMERY, CEO  
KOHLS DEPARTMENT STORES, INC.  
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MENOMONEE FALLS, WI 53051

STEVEN A BURD, CEO  
SAFEWAY, INC.  
5918 STONERIDGE MALL RD  
PLEASANTON, CA 94588-3229



## **PRODUCT LIST**

### **CRYSTAL CLEAR INDUSTRIES INC**

NORMAN 6OZ MOUTHWASH DECANTER 24% LEAD CRYSTAL UPC CODE: 044117  
230301 This product description pertains not only to the specific model of the product listed, but also for all units of all models of leaded crystal vessels

### **KOHL'S DEPARTMENT STORES, INC.**

SHANNON CRYSTAL BY GODINGER DUBLIN SET OF 4 10OZ. CRYSTAL HIGHBALLS  
24% LEAD CRYSTAL UPC CODE: 028199 258842; SHANNON CRYSTAL BY GODINGER  
DUBLIN SET OF 4 9OZ CRYSTAL GOBLETS 24% LEAD CRYSTAL STYLE# 25904 UPC  
CODE: 028199 259047; LONGCHAMP CRISTAL D'ARQUES 4 53/4OZ GLASSES UPC  
CODE: 026102 673119 These product descriptions pertain not only to the specific models of the  
products listed, but also for all units of all models of leaded crystal vessels

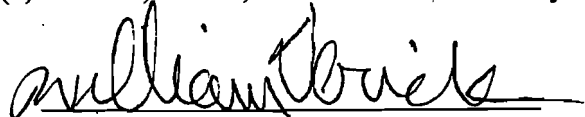
### **SAFEWAY, INC.**

RIEDEL VINUM CRYSTAL CHAMPAGNE #6416/8 UPC CODE: 632868 016086; RIEDEL  
VINUM CHABLIS UPC CODE: 632868 716054 These product descriptions pertain not only to  
the specific models of the products listed, but also for all units of all models of leaded crystal  
vessels

**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

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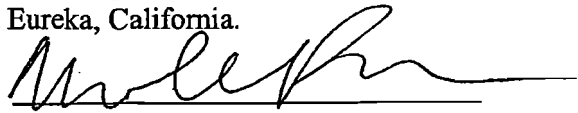
This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed 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.

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**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