

SUMMONS ISSUED

FILED
San Francisco County Superior Court

MAY 29 2009

GORDON PARK-LI, Clerk

BY: Elias Butt
Deputy Clerk

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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. **CBC-09-488845**

23 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

24 v.

25 ANTHROPOLOGIE, INC. and MICHAEL
26 ARAM, INC.,

27 Defendants.

BUSINESS TORT

28 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

INTRODUCTION

1. This Complaint seeks civil penalties and an injunction to remedy the continuing failure of defendants ANTHROPOLOGIE, INC. and MICHAEL ARAM, INC. (hereinafter "Defendants"), to give clear and reasonable warnings to those residents of California, who handle and use hardware (such as drawer knobs, door knobs and drawer pulls) that consist of, or which incorporate components made of, leaded brass and/or bronze (hereinafter referred to as "leaded-

1 brass hardware”), that handling and use of these products causes those residents to be exposed to
2 lead and lead compounds, lead acetate, lead phosphate, and lead subacetate (hereinafter,
3 collectively, “lead”). The specific types of products at issue in the complaint are those listed in
4 the Products List of the Proposition 65 Notice of Violation Letter that is attached to this
5 complaint and which are incorporated into this complaint. Lead is known to the State of
6 California to cause cancer, birth defects and male and female reproductive toxicity. Defendants
7 manufacture, distribute, and/or market leaded-brass hardware. These products cause exposures to
8 lead and lead compounds, which are chemicals known to the State of California to cause cancer,
9 birth defects and other reproductive harm.

10 2. Defendants are businesses that manufacture, market, and/or distribute leaded-
11 brass hardware. Defendants intend that residents of California handle and use leaded-brass
12 hardware that Defendants manufacture, market, and/or distribute. When these products are
13 handled and used in their normally intended manner, they expose people to lead. In spite of
14 knowing that residents of California were and are being exposed to these chemicals when they
15 handle and use leaded-brass hardware, Defendants did not and do not provide clear and
16 reasonable warnings that these products cause exposure to chemicals known to cause cancer,
17 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.

23 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
24 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known
25 to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order that
26 defendants identify and locate each individual person who in the past has purchased leaded-brass
27 hardware and to provide to each such purchaser a clear and reasonable warning that the leaded-
28 brass hardware will cause exposures to chemicals known to cause birth defects.

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-brass hardware
9 manufactured, distributed or marketed by Defendants and are so exposed without a clear and
10 reasonable Proposition 65 warning.

11 6. Defendants are each a person doing business within the meaning of Health &
12 Safety Code Section 25249.11. Defendants are businesses that manufacture, distribute, and/or
13 market leaded-brass hardware in California, including the City and County of San Francisco.
14 Manufacture, distribution and/or marketing of these products in the City and County of San
15 Francisco and/or to people who live in San Francisco, causes people to be exposed to lead and
16 lead compounds while they are physically present in the City and County of San Francisco.

17 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &
18 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
19 Notice of Violation letter dated January 29, 2009, which Mateel sent to California's Attorney
20 General. Letters identical in substance 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. On that same
22 date, Mateel sent identical Notice of Violation letters to each defendant. Attached to the Notice
23 of Violation Letters sent to each defendant was a summary of Proposition 65 that was prepared
24 by California's Office of Environmental Health Hazard Assessment. In addition, each Notice of
25 Violation Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service
26 of the Notice of Violation Letter on each entity which received it. Pursuant to California Health
27 & Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and
28 meritorious basis for the action was also sent with each Notice of Violation Letter. Factual

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

3 8. Defendants are all businesses that employ 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 Defendants because they are businesses that
11 have sufficient minimum contacts in California and within the City and County of San Francisco.
12 Defendants intentionally availed themselves of the California and San Francisco County markets
13 for leaded-brass hardware. It is thus consistent with traditional notions of fair play and
14 substantial justice for the San Francisco Superior Court to exercise jurisdiction over them.

15 11. Venue is proper in this Court because Defendants market their leaded-brass
16 hardware in and around San Francisco and thus cause people to be exposed to lead and lead
17 compounds while those people are physically present in San Francisco. Liability for Plaintiff's
18 causes of action, or some parts thereof, has accordingly arisen in San Francisco during the times
19 relevant to this Complaint and Plaintiff seeks civil penalties and forfeitures imposed by statutes.

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

22 12. Plaintiff realleges and incorporates by reference into this First Claim for Relief, 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 persons who, in the course of doing business, knowingly and intentionally expose any

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

3 15. Since at least January 29, 2006, Defendants have 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-brass hardware. The normally intended use of leaded-brass hardware
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. Defendants have 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, Defendants knew that the leaded-brass
12 hardware they manufactured, distributed or marketed was causing exposures to lead and lead
13 compounds. Defendants intended that residents of California handle and use leaded-brass
14 hardware in such ways as would lead to significant exposures to these chemicals.

15 17. By the above described acts, Defendants have violated Cal. Health & Safety Code
16 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
17 65, requiring them to provide warnings to their past customers who purchased defendants'
18 products without receiving a clear and reasonable warning, and to provide warnings to future
19 customers.

20 **SECOND CAUSE OF ACTION**
21 **(Claim for Civil Penalties)**

22 18. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as
23 if specifically set forth herein, paragraphs 1 through 17, inclusive.

24 19. By the above described acts, Defendants are liable and should be liable pursuant
25 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each
26
27
28

1 individual exposed to lead and lead compounds from the handling or use of Defendants' leaded-
2 brass hardware.

3 PRAYER FOR RELIEF

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

5 A. Pursuant to the First Cause of Action, that all Defendants be enjoined, restrained,
6 and ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
7 Code;

8 B. Pursuant to the Second Cause of Action, that each Defendant be assessed a civil
9 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
10 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
11 Defendants' manufacturing, distributing or marketing of leaded-brass hardware;

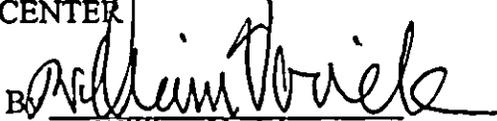
12 C. That Defendants be ordered to identify and locate each individual who purchased
13 leaded-brass hardware and provide a warning to each such person that the leaded-brass hardware
14 the person purchased will expose that person to chemicals known to cause birth defects.

15 D. That Defendants be ordered to pay Mateel's attorney's fees and costs incurred in
16 prosecuting this action.

17 E. For such other relief as this court deems just and proper.

18 Dated: May 20, 2009

19 KLAMATH ENVIRONMENTAL LAW
20 CENTER

21 

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



Klamath

ENVIRONMENTAL
LAW CENTER

January 29, 2009

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 companies on the attached service list have been, are 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 at both Mateel and this office. The above referenced violations occur when California residents come into contact with products that are made of, or incorporate parts made of, brass and/or bronze (collectively "brass products"). A list of examples of the specific types of products at issue is attached. Though the products on the attached list are listed with a product number or SKU, this Notice pertains to all products of the same specific type, not just to those products, the specific numbers for which are listed in the product list. The brass products are made in whole, or in part, from leaded brass, which 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 whenever they handle these brass products, such as when buying them, when handling them, or when using them. Lead is transferred from the brass 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 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, mucus membrane, ingestion and inhalation routes. The listed companies did not and do not provide people with clear and reasonable warnings before they expose them to lead. These violations have occurred every day since at least January 29, 2006, and will continue every day until the lead is removed from the brass 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 brass products made outside of California, except as to workplaces the companies themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and the companies' properties and in each of California's 58 counties.

Cordially,

William Verick

SERVICE LIST

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GENERAL
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OAKLAND CA 94612-0550

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SAN FRANCISCO, CA 94102

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CITY OF LOS ANGELES
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LOS ANGELES, CA 90012

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CITY OF SAN DIEGO CONSUMER &
ENVIRONMENTAL PROTECTION
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COUNTY OF AMADOR
708 COURT STREET
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OFFICE OF THE DISTRICT
ATTORNEY
COUNTY OF BUTTE
25 COUNTY CENTER DR.
OROVILLE, CA 95963

OFFICE OF THE DISTRICT
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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PLACERVILLE, CA 95667

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WILLOWS, CA 95988

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825 5TH ST.
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EL CENTRO, CA 92243

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P.O. DRAWER D
INDEPENDENCE, CA 93526

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220 SOUTH LASSEN ST. STE 8
SUSANVILLE, CA 96130

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COUNTY OF LOS ANGELES
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ATTORNEY
COUNTY OF MADERA
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MADERA, CA 93637

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2222 M ST.
MERCED, CA 95340

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P.O. BOX 617
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240 CHURCH STREET
P.O. BOX 1131
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

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COUNTY OF PLACER
11562 B AVE
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COUNTY OF PLUMAS
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QUINCY, CA 95971

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419 4TH ST
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SAN BERNARDINO, CA 92415-0004

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COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

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COUNTY OF SAN MATEO
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REDWOOD CITY, CA 94063

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1112 SANTA BARBARA ST.
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COUNTY OF SANTA CLARA
70 W. HEDDING ST.
SAN JOSE, CA 95110

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CRUZ
701 OCEAN ST. #200
SANTA CRUZ, CA 95060

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1525 COURT ST.
REDDING, CA 96001

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DOWNEVILLE, CA 95936

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YREKA, CA 96097

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600 UNION AVE
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COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
SANTA ROSA, CA 95403

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COUNTY OF STANISLAUS
1100 I ST. #200
MODESTO, CA 95334

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1160 CIVIC CENTER BLVD. #A
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P.O. BOX 519
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COUNTY OF TRINITY
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COUNTY OF TULARE
COURTHOUSE #224
VISALIA, CA 93291

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COUNTY OF TUOLUMNE
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SONORA, CA 95370

VENTURA COUNTY DISTRICT
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VENTURA, CA 93009

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
301 SECOND STREET
WOODLAND, CA 95695

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

GLENN T. SENK, CEO
ANTHROPOLOGIE, INC.
5000 S. BROAD STREET
PHILADELPHIA, PA 19112

MICHAEL ARAM, PRESEIDENT
MICHAEL ARAM, INC.
2102 83RD STREET
NORTH BERGEN, NJ 07047

PRODUCT LIST

ANTHROPOLOGIE, INC.

KNB MOTHER OF PEARL SQUARE DRAWER KNOBS #14427066; DK MOTHER OF PEARL CIRCULAR DOOR KNOBS #13524566 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of household items that have leaded-brass components.

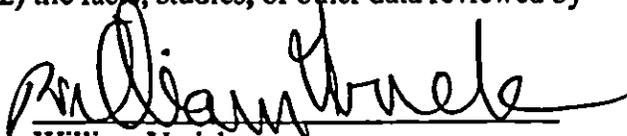
MICHAEL ARAM, INC.

GOLD-TONE TWIG PULL # 231015 UPC CODE: 790824 324078 This product description pertains not only to the specific model of the product listed, but also for all units of all models of household items that have leaded-brass components.

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: January 29, 2009

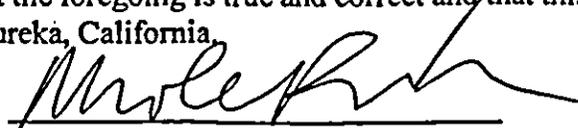

William Verick

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 January 29, 2009, 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 January 29, 2009, at Eureka, California.


Nicole Frank