

FILED
San Francisco County Superior Court

MAY 22 2009

GORDON PARK-LI, Clerk
BY *[Signature]* Deputy Clerk

SUMMONS ISSUED

CASE MANAGEMENT CONFERENCE SET

OCT 23 2009 - 9^{AM}

DEPARTMENT 212

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10 Attorneys for Plaintiff,
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

CASE NO. CGC-09-488624

17 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 v.

19 GO HOME LTD,
20 Defendant.

TOXIC TORT/ENVIRONMENTAL

21 _____ /
22 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

23 INTRODUCTION

24 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
25 failure of Defendant GO HOME LTD (hereinafter "Defendant"), to give clear and reasonable
26 warnings to those residents of California, who handle and use, and drink beverages served from
27 drink dispensers, some of which Defendant calls "Apothocary Jars" (hereinafter "beverage
28 dispensers"), that handling and use of and drinking from these beverages served via these

1 dispensers 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 Proposition 65 Notice of Violation Letter that
4 is attached to and incorporated by reference into this Complaint. Lead is known to the State of
5 California to cause cancer, birth defects and male and female reproductive toxicity. Defendant
6 distributes, and/or markets beverage dispensers. These products cause exposures to lead and lead
7 compounds, which are chemicals known to the State of California to cause cancer, birth defects
8 and other reproductive harm.

9 2. Defendant markets, and/or distributes beverage dispensers. Defendant intends that
10 residents of California handle, use and drink beverages that are served via beverage dispensers
11 that Defendant markets, and/or distributes. When these products are handled and used in their
12 normally intended manner and when people drink beverages that have been served via them,
13 these beverage dispensers expose people to lead. In spite of knowing that residents of California
14 were and are being exposed to this toxic heavy metal when they handle, use and drink beverages
15 served via these beverage dispensers, Defendant did not and does 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 Defendant to bring its business practices into compliance with section 25249.5 et seq.
20 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 Defendant's
22 products. Plaintiff seeks an order that defendant identify and locate each individual person who
23 in the past has purchased beverage dispensers, and to provide to each such purchaser a clear and
24 reasonable warning that the beverage dispensers will cause exposures to chemicals known to
25 cause birth defects.

26 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
27 of Defendant 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 beverage dispensers
9 manufactured, distributed or marketed by Defendant and are so exposed without a clear and
10 reasonable Proposition 65 warning.

11 6. Defendant is a person doing business within the meaning of Health & Safety Code
12 Section 25249.11. Defendant is a business that distributes, and/or markets beverage dispensers in
13 California, including the City and County of San Francisco. Distribution and/or marketing of
14 these products in the City and County of San Francisco and/or to people who live in San
15 Francisco, causes people to be exposed to lead and lead compounds while they are physically
16 present in the City and County of San Francisco.

17 7. Plaintiff brings this enforcement action against Defendant 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 February 24, 2009, which Mateel sent to California's Attorney
20 General. Substantively identical letters 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, and to each
22 defendant. Attached to the Notice of Violation Letter sent to each defendant was a summary of
23 Proposition 65 that was prepared by California's Office of Environmental Health Hazard
24 Assessment. In addition, each Notice of Violation Letter plaintiff sent was accompanied by a
25 Certificate of Service attesting to the service of the Notice of Violation Letter on each entity
26 which received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate
27 of Merit attesting to the reasonable and meritorious basis for the action was also sent with each
28 Notice of Violation Letter. Factual information sufficient to establish the basis of the Certificate

1 of Merit was enclosed with the Notice of Violation letter Mateel sent to the Attorney General.

2 8. Each defendant employs more than ten people.

3 JURISDICTION

4 9. The Court has jurisdiction over this action pursuant to California Health & Safety
5 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
6 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
7 of the Health & Safety Code, which contains the statutes under which this action is brought, does
8 not grant jurisdiction to any other trial court.

9 10. This Court also has jurisdiction over Defendant because it is a business that has
10 sufficient minimum contacts in California and within the City and County of San Francisco.
11 Defendant intentionally availed itself of the California and San Francisco County markets for
12 beverage dispensers. It is thus consistent with traditional notions of fair play and substantial
13 justice for the San Francisco Superior Court to exercise jurisdiction over Defendant.

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

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

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

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

26 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
27 that businesses that knowingly and intentionally expose any individual to a chemical known to
28 the State of California to cause cancer or birth defects must first provide a clear and reasonable

1 warning to such individual prior to the exposure.

2 15. Since at least February 24, 2006, Defendant has engaged in conduct that violates
3 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
4 intentionally exposing to the above mentioned toxic chemicals, those California residents who
5 handle, use or drink beverages served via Defendant's beverage dispensers. The normally
6 intended use of beverage dispensers causes exposure to lead and lead compounds, which are
7 chemicals known to the State of California to cause cancer, birth defects and other reproductive
8 harm. Defendant has not provided clear and reasonable warnings, within the meaning of Health
9 & Safety Code Sections 25249.6 and 25249.11.

10 16. At all times relevant to this action, Defendant knew that the beverage dispensers it
11 distributed or marketed were causing exposures to lead and lead compounds. Defendant
12 intended that residents of California handle, use and drink beverages served via beverage
13 dispensers in such ways as would lead to significant exposures to these chemicals.

14 17. By the above described acts, Defendant has violated Cal. Health & Safety Code
15 § 25249.6 and is therefore subject to an injunction ordering them to stop violating Proposition
16 65, to provide warnings to all present and future customers and to provide warnings to their past
17 customers who purchased Defendant's products without receiving a clear and reasonable
18 warning.

19 SECOND CAUSE OF ACTION
20 (Claim for Civil Penalties)

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

23 19. By the above described acts, Defendant is liable and should be liable pursuant to
24 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
25 exposed without proper warning to lead and lead compounds from the handling, use of, or the
26 drinking of beverages served via Defendant's beverage dispensers.

27 PRAYER FOR RELIEF

28 Wherefore, plaintiff prays for judgment against Defendant, as follows:

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

4 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
5 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
6 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
7 Defendant's distributing or marketing of beverage dispensers;

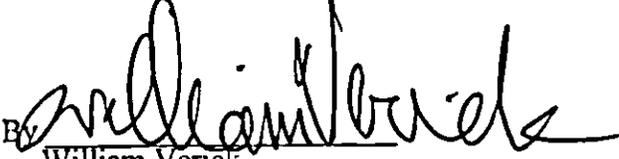
8 3. That Defendant be ordered to identify and locate each individual who purchased
9 beverage dispensers and provide a warning to each such person that the beverage dispensers the
10 person purchased will expose that person to chemicals known to cause birth defects.

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

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

14 Dated: May 19, 2009

KLAMATH ENVIRONMENTAL LAW CENTER

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16
17 By 
18 William Verick
19 Attorney for Plaintiff
20 Mateel Environmental Justice Foundation
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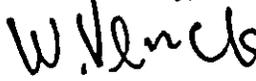
February 24, 2009

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 Go Home LTD ("Go Home") 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 the brass valves, stopcocks or beer taps ("taps") on beverage dispensers (hereinafter "brass valved beverage dispensers"), and when they drink beverages that have flowed through the leaded brass valves, stopcocks or taps that Go Home markets. Some specific examples of the products to which this notice pertains are: APOTHECARY JAR 31"/CLEAR; APOTHECARY JAR 26"/CLEAR ITEM # LH02 GO HOME ITEM # 9443; APOTHECARY JAR SMALL 26" CLEAR HCFO9 KO05L; APOTHECARY JAR 26"/CLEAR ITEM # LH02 GO HOME ITEM # 9443 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 valves, stopcocks or taps on these brass valved beverage dispensers are made 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 the brass valves, stopcocks or taps, such as when serving beverages from these products, when washing them, or when drinking beverages that have flowed through the brass valves, stopcocks, or taps. Lead is transferred from the brass to peoples' 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. Lead also leaches from the brass into the beverages that flow through the brass valves, stopcocks or taps and is then drunk. These lead exposures occur via the dermal absorption, subcutaneous, mucous membrane, ingestion and inhalation routes. Go Home 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 February 24, 2006, and will continue every day until the lead is removed from the brass valves, stopcocks or taps, 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 valved beverage dispensers made outside of California, except as to workplaces the Go Home itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Go Home's private business properties and in each of California's 58 counties.

Cordially,


William Verick

SERVICE LIST

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OAKLAND CA 94612-0550

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CITY OF SAN JOSE
200 EAST SANTA CLARA STREET
SAN JOSE, CA 95113

OFFICE OF THE CITY ATTORNEY
CITY OF LOS ANGELES
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CITY OF SAN DIEGO CONSUMER &
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COUNTY OF LASSEN
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STOCKTON, CA 95202

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

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HALL OF JUSTICE AND RECORDS
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COUNTY OF SANTA CRUZ
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SANTA CRUZ, CA 95060

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OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
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YREKA, CA 96097

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COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
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1100 I ST. #200
MODESTO, CA 95354

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COUNTY OF TULARE
COURTHOUSE #224
VISALIA, CA 93291

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COUNTY OF TUOLUMNE
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301 SECOND STREET
WOODLAND, CA 95695

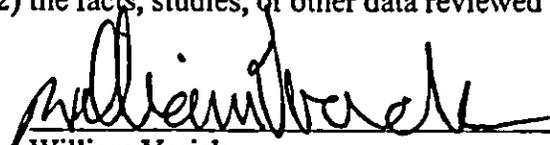
OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

PRESIDENT OR CEO
GO HOME LTD.
132-01 34TH AVENUE
P.O. BOX 541625
FLUSHING NY 11354

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: February 24, 2009

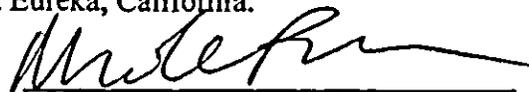

William Verick

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 February 24, 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 February 24, 2009, at Eureka, California.


Nicole Frank