

SUMMONS ISSUED

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**FILED**  
San Francisco County Superior Court

SEP - 8 2009

GORDON PARKER, Clerk  
BY: *Elis B. [Signature]*  
Deputy Clerk

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CASE MANAGEMENT CONFERENCE SET

FEB - 5 2010 - 9 AM

DEPARTMENT 212

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-09-492156**

17 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

18 v.

19 SWANSON TOOL COMPANY; and  
20 COBRA PRODUCTS, INC.,

21 Defendants.

BUSINESS TORT

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 defendants SWANSON TOOL COMPANY; and COBRA PRODUCTS, INC.  
26 (hereinafter "Defendants"), to give clear and reasonable warnings to those residents of California,  
27 who handle and use tools that consist of, or which incorporate components made of, leaded brass  
28 and/or bronze (hereinafter referred to as "leaded-brass tools"), that handling and use of these

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

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

16         3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7  
17 to compel Defendants to bring their business practices into compliance with section 25249.5 et  
18 seq. by providing a clear and reasonable warning to each individual who has been and who in the  
19 future may be exposed to the above mentioned toxic chemicals from the use of Defendants'  
20 products.

21         4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure  
22 of Defendants to provide clear and reasonable warnings regarding exposure to chemicals known  
23 to cause cancer, birth defects and other reproductive harm. Plaintiff also seeks an order that  
24 defendants identify and locate each individual person who in the past has purchased leaded-brass  
25 tools and to provide to each such purchaser a clear and reasonable warning that the leaded-brass  
26 tools 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 tools  
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 tools 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 May 7, 2009, which Mateel sent to California's Attorney General.  
20 Letters identical in substance were sent to every District Attorney in the state, and to the City  
21 Attorneys of every California city with a population greater than 750,000. On that same date,  
22 Mateel sent identical Notice of Violation letters to each defendant. Attached to the Notice of  
23 Violation Letters sent to each defendant was a summary of Proposition 65 that was prepared by  
24 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 tools. It is thus consistent with traditional notions of fair play and substantial  
14 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 tools  
16 in and around San Francisco and thus cause people to be exposed to lead and lead compounds  
17 while those people are physically present in San Francisco. Liability for Plaintiff's causes of  
18 action, or some parts thereof, has accordingly arisen in San Francisco during the times relevant to  
19 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 May 7, 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 tools. The normally intended use of leaded-brass tools causes  
7 exposure to lead and lead compounds, which are chemicals known to the State of California to  
8 cause cancer, birth defects and other reproductive harm. Defendants have not provided clear and  
9 reasonable warnings, within the meaning of Health & Safety Code Sections 25249.6 and  
10 25249.11.

11 16. At all times relevant to this action, Defendants knew that the leaded-brass tools  
12 they manufactured, distributed or marketed were causing exposures to lead and lead compounds.  
13 Defendants intended that residents of California handle and use leaded-brass tools in such ways  
14 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 tools.

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 Defendants 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 tools;

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

15 D. That, pursuant to Cal. Code of Civil Procedure §1021.5, Defendants be ordered to  
16 pay Mateel's attorney's fees and costs incurred in prosecuting this action.

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

18 Dated: September 1, 2009

19 KLAMATH ENVIRONMENTAL LAW  
CENTER

20 By   
21

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



May 7, 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 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 tools that are made from, or that incorporate as components, leaded-brass or bronze. The brass or bronze parts on these tools contain lead and lead compounds ("lead"), which are chemicals known to cause cancer, birth defects and other reproductive harm. The listed companies market these leaded-brass or leaded bronze-containing tools. Some specific examples of the products to which this notice pertains are attached on the 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. People are exposed to lead at work or elsewhere when they use these tools and their skin comes into contact with the brass. Lead is transferred from the tools 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 occur via the dermal absorption, mucous membrane, subcutaneous, inhalation and ingestion routes. The listed 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 May 7, 2006, 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 leaded-brass or bronze tools 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 off the listed businesses' properties and in each of California's 58 counties.

Cordially,

A handwritten signature in black ink, appearing to read "W. Verick", with a long, sweeping underline that extends to the right.

William Verick

## SERVICE LIST

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25 COUNTY CENTER DR.  
OROVILLE, CA 95965

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222 E. WEBER AVE #202  
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COUNTY GOVERNMENT CENTER #450  
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VISALIA, CA 93291

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VENTURA, CA 93009

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WOODLAND, CA 95695

OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF YUBA  
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MARYSVILLE, CA 95901

DONALD WOODY, CEO  
COBRA PRODUCTS, INC.  
1 WARNER COURT  
BRIDGEPORT, NJ 08014

TIMOTHY WADHAMS, CEO  
MASCO CORPORATION  
21001 VAN BORN ROAD  
TAYLOR, MI 48180

LARRY D. STONE, PRESIDENT  
LOWE'S COMPANIES, INC  
1000 LOWE'S BLVD.  
MOORESVILLE, NC 28117

DAVID LAPORTE, PRESIDENT  
ROCKLER COMPANIES, INC.  
4365 WILLOW DR.  
MEDINA, MN 55340

JAMES S ALLEMAND, PRESIDENT  
SWANSON TOOL COMPANY, INC.  
211 ONTARIO STREET  
FRANKFORT, IL 60423



## PRODUCT LIST

### **COBRA PRODUCTS, INC.**

#### **MASCO CORPORATION**

COBRA PRODUCTS SMALL DRAIN CLEANING BLADDER LX-00331 UPC CODE: 088712 103318 This product description pertains not only to the specific model of the product listed, but also for all units of all models of tools that have brass components.

### **LOWE'S COMPANIES, INC.**

KOBALT #8 DRILL AND DRIVER #280534 UPC CODE: 051667 800939 This product description pertains not only to the specific model of the product listed, but also for all units of all models of tools that have brass components.

### **ROCKLER COMPANIES, INC.**

4" TRY SQUARE #55111 UPC CODE: 5038224 901242; 6" TRY/MITRE SQUARE #12938 UPC CODE: 5038224 901303; CROWN TOOLS 9" SLIDING T-BEVEL #98782 UPC CODE: 5038224 901167; CROWN TOOLS SCREW SLIDE MORTICE GAUGE UPC CODE: 5017981 001549; CROWN TOOLS 4" TRY SQUARE #55111 UPC CODE: 5038224 901242 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of tools that have brass components.

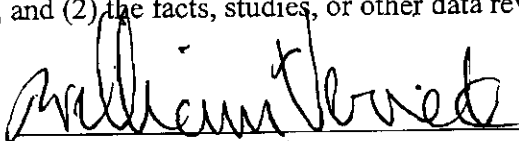
### **SWANSON TOOL COMPANY**

SWANSON BRASS STAIR GAUGES SG0020 HEAVY DUTY UPC CODE: 038987 000201; SWANSON 9" T-BEVEL PROFESSIONAL TS149 UPC CODE: 038987 014901; SWANSON 8 OZ BRASS PLUMB BOB PB008B UPC CODE: 038987 012082; SWANSON 6" COMBINATION SQUARE TC130 HEAVY DUTY UPC CODE: 038987 001307; SWANSON 16" COMBINATION SQUARE PROFESSIONAL TC134 UPC CODE: 038987 001345; SWANSON 12" COMBINATION SQUARE TC132 PROFESSIONAL UPC CODE: 038987 001321; SPEEDLINE 12" SPEEDLITE COMBINATION SQUARE HOMEOWNER TC131 UPC CODE: 038987 001314 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of tools that have 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: May 7, 2009

  
William Verick

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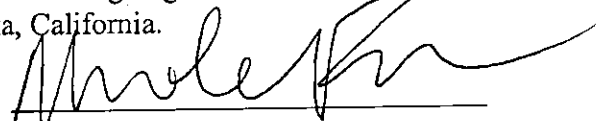
This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed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

---

**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 May 7, 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 May 7, 2009, at Eureka, California.

  
Nicole Frank