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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF HUMBOLDT
15 (Unlimited Jurisdiction)

DR 09 06 75

16 MATEEL ENVIRONMENTAL
17 JUSTICE FOUNDATION,

CASE NO.

18 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

19 v.

20 WEST MARINE, INC.,

21 Defendant.

/ 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 defendant WEST MARINE, INC.; (hereinafter "Defendant"), to give clear and
26 reasonable warnings to those residents of California, who handle and use products that are made
27 of, or incorporate parts made of, brass and/or bronze (hereinafter referred to as "brass products"),
28

1 that handling and use of these products causes those residents to be exposed to lead and lead
2 compounds, lead acetate, lead phosphate, and lead subacetate (hereinafter, collectively, "lead").
3 Lead is known to the State of California to cause cancer, birth defects and male and female
4 reproductive toxicity. Defendant manufactures, distributes, and/or markets brass products. These
5 products cause exposures to lead and lead compounds, which are chemicals known to the State of
6 California to cause cancer, birth defects and other reproductive harm.

7 2. Defendant is a business that manufactures, markets, and/or distributes brass
8 products. Defendant intends that residents of California handle and use brass products that
9 Defendant manufactures, markets, and/or distributes. When these products are handled and used
10 in their normally intended manner, they expose people to lead. In spite of knowing that residents
11 of California were and are being exposed to these chemicals when they handle and use brass
12 products, Defendant did not and does not provide clear and reasonable warnings that these
13 products cause exposure to chemicals known to cause cancer, birth defects and other
14 reproductive harm. The brass products to which this Complaint pertains are those referenced in
15 the Products List that accompanied the May 21, 2009 60-Day Notice Letter, which is appended to
16 and incorporated by reference into this Complaint.

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

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

PARTIES

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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 brass products manufactured,
9 distributed or marketed by Defendant and are so exposed without a clear and reasonable
10 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 manufactures, distributes, and/or markets brass
13 products in California, including the City of Eureka and the County of Humboldt. Manufacture,
14 distribution and/or marketing of these products in the City or Eureka and the County of
15 Humboldt and/or to people who live in Humboldt County, causes people to be exposed to lead
16 and lead compounds while they are physically present in the City of Eureka and County of
17 Humboldt.

18 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &
19 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
20 60-day Notice letter dated May 21, 2009, which Mateel sent to California's Attorney General.
21 Letters identical in substance were sent to every District Attorney in the state, and to the City
22 Attorneys of every California city with a population greater than 750,000. On that same day,
23 Mateel sent identical 60-Day Notice letters to each defendant. Attached to the 60-Day Notice
24 Letters sent to each defendant was a summary of Proposition 65 that was prepared by
25 California’s Office of Environmental Health Hazard Assessment. In addition, each 60-Day
26 Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service of
27 the 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety
28 Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis

1 for the action was also sent with each 60-Day Notice Letter. Factual information sufficient to
2 establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter Mateel
3 sent to the Attorney General.

4 8. Defendant is a business that employs more than ten people.

5 JURISDICTION

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

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

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

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

23 12. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as
24 if specifically set forth herein, paragraphs 1 through 11, inclusive.

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

28 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates

1 that persons who, in the course of doing business, knowingly and intentionally expose any
2 individual to a chemical known to the State of California to cause cancer or birth defects must
3 first provide a clear and reasonable warning to such individual prior to the exposure.

4 15. Since at least May 21, 2006, Defendant has engaged in conduct that violates
5 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
6 intentionally exposing to the above mentioned toxic chemicals, those California residents who
7 handle and use brass products. The normally intended use of brass products causes exposure 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. Defendant has not provided clear and reasonable
10 warnings, within the meaning of Health & Safety Code Sections 25249.6 and 25249.11.

11 16. At all times relevant to this action, Defendant knew that the brass products it
12 manufactured, distributed or marketed were causing exposures to lead and lead compounds.
13 Defendant intended that residents of California handle and use brass products in such ways as
14 would lead to significant exposures to these chemicals.

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

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

21 18. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as
22 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 to lead and lead compounds from the handling or use of Defendant's brass products.

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1 PRAYER FOR RELIEF

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

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

6 B. Pursuant to the Second Cause of Action, that Defendant 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 manufacturing, distributing or marketing of brass products;

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

13 D. That Defendant be ordered to pay Mateel's attorney's fees and costs incurred in
14 prosecuting this action.

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

16 Dated: August 4, 2009

KLAMATH ENVIRONMENTAL LAW CENTER

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18 By 

19 William Verick
20 Attorney for Plaintiff
21 Mateel Environmental Justice Foundation
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