

SUMMONS ISSUED  
**FILED**  
San Francisco County Superior Court

SEP 29 2009

GORDON PARK-LI, Clerk

BY: Elias Bitt  
Deputy Clerk

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11 Attorneys for Plaintiff,  
MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO  
(Unlimited Jurisdiction)

15  
16 MATEEL ENVIRONMENTAL  
17 JUSTICE FOUNDATION,

18 Plaintiff,

19 v.

20 AMERICA'S BEST COFFEE ROASTING  
21 COMPANY, INC.; and GENERAL  
22 ESPRESSO EQUIPMENT CORPORATION

23 Defendants.

CASE NO. **09C-09-492980**

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

24 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

25 INTRODUCTION

26 1. This Complaint seeks civil penalties and an injunction to remedy the continuing  
27 failure of defendants AMERICA'S BEST COFFEE ROASTING COMPANY, INC.; and  
28 GENERAL ESPRESSO EQUIPMENT CORPORATION (hereinafter "Defendants"), to give

1 clear and reasonable warnings to those residents of California who handle, use, and drink  
2 beverages made in, espresso machines that utilize leaded brass components (hereinafter referred  
3 to as “espresso machines”), that handling and use of these espresso machines causes those  
4 residents to be exposed to lead and lead compounds, lead acetate, lead phosphate, and lead  
5 subacetate (hereinafter, collectively, “lead”). The types of products to which this Complaint  
6 pertains are those types listed in the Product List appended to the Proposition 65 60-Day Notice  
7 Letters that are attached to and incorporated by reference into this Complaint. Lead is known to  
8 the State of California to cause cancer, birth defects and male and female reproductive toxicity.  
9 Defendants distribute, and/or market espresso machines. These products cause exposures to lead  
10 and lead compounds, which are chemicals known to the State of California to cause cancer, birth  
11 defects and other reproductive harm.

12         2. Defendants market, and/or distribute espresso machines. Defendants intend that  
13 residents of California handle, use and drink beverages made using the espresso machines that  
14 Defendants market, and/or distribute. When these products are handled and used in their  
15 normally intended manner and when people drink beverages made from water that has been  
16 heated in them, these espresso machines expose people to lead. In spite of knowing that residents  
17 of California were and are being exposed to these chemicals when they handle, use and drink  
18 beverages made using espresso machines, Defendants did not and do not provide clear and  
19 reasonable warnings that these products cause exposure to chemicals known to cause cancer,  
20 birth defects and other reproductive harm.

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



1 Certificate of Service attesting to the service of the 60-Day Notice Letter on each entity which  
2 received it. Pursuant to California Health & Safety Code Section 25249.7(d). A Certificate of  
3 Merit attesting to the reasonable and meritorious basis for the action was also sent with each 60-  
4 Day Notice Letter. Factual information sufficient to establish the basis of the Certificate of Merit  
5 was enclosed with the 60-Day Notice letters that Mateel sent to the Attorney General.

6 8. Each Defendant has more than ten people who work for it.

7 JURISDICTION

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

13 10. This Court also has jurisdiction over each Defendant because each is a business  
14 that has sufficient minimum contacts in California and within the City and County of San  
15 Francisco. Defendants intentionally availed themselves of the California and San Francisco  
16 County markets for espresso machines. It is thus consistent with traditional notions of fair play  
17 and substantial justice for the San Francisco Superior Court to exercise jurisdiction over  
18 Defendants.

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

24 FIRST CAUSE OF ACTION  
25 (Claim for Injunctive Relief)

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

28 13. The People of the State of California have declared by referendum under

1 Proposition 65 (California Health & Safety Code § 25249.5 et seq.) their right "[t]o be informed  
2 about exposures to chemicals that cause cancer, birth defects, and reproductive harm."

3 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates  
4 that businesses that knowingly and intentionally expose any individual to a chemical known to  
5 the State of California to cause cancer or birth defects must first provide a clear and reasonable  
6 warning to such individual prior to the exposure.

7 15. Since at least June 25, 2006, Defendants have engaged in conduct that violates  
8 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and  
9 intentionally exposing to the above mentioned toxic chemicals, those California residents who  
10 handle, use, or drink beverages made using, espresso machines. The normally intended use of  
11 espresso machines causes exposure to lead and lead compounds, which are chemicals known to  
12 the State of California to cause cancer, birth defects and other reproductive harm. No Defendant  
13 has provided any clear and reasonable warnings, within the meaning of Health & Safety Code  
14 Sections 25249.6 and 25249.11.

15 16. At all times relevant to this action, Defendants knew that the espresso machines  
16 they distributed or marketed were causing exposures to lead and lead compounds. Defendants  
17 intended that residents of California handle, use and drink beverages made using espresso  
18 machines in such ways as would lead to significant exposures to these chemicals.

19 17. By the above described acts, Defendants have violated Cal. Health & Safety Code  
20 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition  
21 65, to provide warnings to all present and future customers and to provide warnings to customers  
22 who purchased Defendants' products in the past and who continue to be exposed to lead without  
23 receiving a clear or reasonable warning.

24 SECOND CAUSE OF ACTION  
25 (Claim for Civil Penalties)

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

28 19. By the above described acts, each Defendant is liable and should be liable

1 pursuant to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each  
2 individual exposed without proper warning to lead and lead compounds from the handling, use  
3 of, or the drinking of beverages made using Defendants' espresso machines.

4 PRAYER FOR RELIEF

5 Wherefore, plaintiff prays for judgment against Defendants, as follows:

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

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

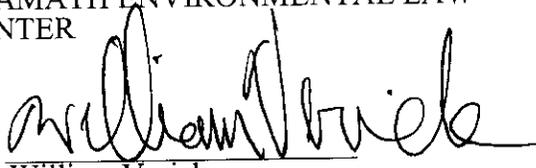
13 3. That Defendants be ordered to identify and locate each individual who purchased  
14 espresso machines and provide a warning to each such person that the espresso machines the  
15 person purchased will expose that person to chemicals known to cause birth defects.

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

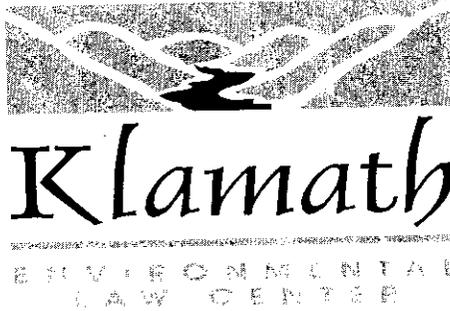
18 5. For such other relief as this court deems just and proper.

19 Dated: September 23, 2009

20 KLAMATH ENVIRONMENTAL LAW  
21 CENTER

22 By 

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



June 25, 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 businesses 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 at both Mateel and this office. The above referenced violations occur when California residents come into contact with leaded brass components (brass group heads, boilers, tubes, fittings, steam wands and porta filters, collectively hereinafter "leaded brass plumbing") in espresso and coffee machines ("espresso machines") and when they drink beverages, the water for which has flowed through the leaded brass plumbing in these machines. A list of specific examples of the specific types of products at issue is attached. Though specific model and code numbers are given as examples, this notice pertains to all espresso machines that utilize brass components. The leaded brass plumbing through which water flows in these espresso machines is 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 leaded brass plumbing in these machines, such as when adjusting, maintaining or repairing the machines, or when drinking beverages (such as coffee drinks or tea) that are made from water that has flowed through the leaded brass plumbing. 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 leaded brass plumbing into the water that flows through this plumbing and is then made into drinks that are drunk. These lead exposures thus occur via the dermal absorption, subcutaneous, mucous membrane, ingestion and inhalation routes. The listed businesses 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 June 25, 2006, and will continue every day until the lead is removed from the brass plumbing in these machines, 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 espresso machine made outside of California, except as to workplaces the listed businesses themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the businesses' properties and in each of California's 58 counties.

Cordially,

William Verick

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## SERVICE LIST

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RICK WISHNOW, CEO  
AMERICA'S BEST COFFEE ROASTING COMPANY, INC.  
PO BOX 883131  
SAN FRANCISCO, CA 94188

RICK WISHNOW, CEO  
AMERICA'S BEST COFFEE ROASTING COMPANY, INC.  
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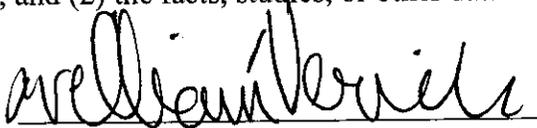
RICK WISHNOW, CEO  
AMERICA'S BEST COFFEE ROASTING COMPANY, INC.  
1500 A DAVIDSON STREET  
SAN FRANCISCO, CA 94124

ROBERTO DAL TIO, PRESIDENT  
GENERAL ESPRESSO EQUIPMENT CORPORATION  
7912 INDUSTRIAL VILLAGE RD  
GREENSBORO, NC 27409

**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: June 25, 2009

  
William Verick

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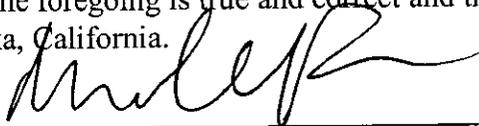
This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed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

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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 June 25, 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 June 25, 2009, at Eureka, California.

  
Nicole Frank

## PRODUCT LIST

**AMERICA'S BEST COFFEE ROASTING COMPANY, INC.**

**GENERAL ESPRESSO EQUIPMENT CORPORATION**

WEGA MINI/VNOVA 2002; ASTORIA ARGENTO COMPACT CKX This product description pertains not only to the specific models of the products listed, but also for all units of all models espresso machines with brass components.