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SUPERIOR COURT

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**CASE MANAGEMENT CONFERENCE SET**

**MAY 21 2010 - 9:00 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)

CGC-09-495332

21 MATEEL ENVIRONMENTAL  
22 JUSTICE FOUNDATION,

CASE NO.

23 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

24 v.

25 COILHOSE PNEUMATICS, INC.; and  
26 LOWES HIW, 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 COILHOSE PNEUMATICS, INC.; and LOWES HIW, INC. (hereinafter "Defendants"), to give clear and reasonable warnings to those residents of California, who handle and use tools and hose-fittings that consist of, or which incorporate components made of, leaded brass and/or bronze (hereinafter collectively referred to as "leaded-brass tools and hose fittings"),

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 The specific types of products at issue in the complaint are those listed in the Products Lists of  
4 the Proposition 65 Notice of Violation Letters that are attached to this complaint and which are  
5 incorporated into this complaint. Lead is known to the State of California to cause cancer, birth  
6 defects and male and female reproductive toxicity. Defendants manufacture, distribute, and/or  
7 market leaded-brass tools and hose fittings. These products cause exposures to lead and lead  
8 compounds, which are chemicals known to the State of California to cause cancer, birth defects  
9 and other reproductive harm.

10 2. Defendants are businesses that manufacture, market, and/or distribute leaded-  
11 brass tools and hose fittings. Defendants intend that residents of California handle and use  
12 leaded-brass tools and hose fittings that Defendants manufacture, market, and/or distribute.  
13 When these products are handled and used in their normally intended manner, they expose  
14 people to lead. In spite of knowing that residents of California were and are being exposed to  
15 these chemicals when they handle and use leaded-brass tools and hose fittings, Defendants did  
16 not and do not provide clear and reasonable warnings that these products cause exposure to  
17 chemicals known to cause cancer, 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 tools and hose fittings and to provide to each such purchaser a clear and reasonable warning that  
28

1 the leaded-brass tools and hose fittings will cause exposures to chemicals known to cause birth  
2 defects.

3  
4 PARTIES

5 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")  
6 is a non-profit organization dedicated to, among other causes, the protection of the environment,  
7 promotion of human health, environmental education, and consumer rights. Mateel is based in  
8 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a  
9 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement  
10 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of  
11 California are regularly exposed to lead and lead compounds from leaded-brass tools and hose  
12 fittings manufactured, distributed or marketed by Defendants and are so exposed without a clear  
13 and reasonable Proposition 65 warning.

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

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

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

6 8. Defendants are all businesses that employ more than ten people.

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 Defendants because they are businesses that  
14 have sufficient minimum contacts in California and within the City and County of San Francisco.  
15 Defendants intentionally availed themselves of the California and San Francisco County markets  
16 for leaded-brass tools and hose fittings. It is thus consistent with traditional notions of fair play  
17 and substantial justice for the San Francisco Superior Court to exercise jurisdiction over them.

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

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

26 12. Plaintiff realleges and incorporates by reference into this First Claim for Relief, as  
27 if specifically set forth herein, paragraphs 1 through 11, inclusive.  
28







August 27, 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 products that are made of, or that incorporate parts made of, brass and/or bronze (collectively "brass products"). The above referenced violations occur when California residents come into contact with brass components that can be handled in the normal or foreseeable use of equipment manufactured, sold or distributed by ORS Nasco (and the other businesses listed on the service list). These brass components are found in welding equipment, safety and security products, pneumatics, measuring and leveling tools, janitorial equipment, hand tools, products and parts used to apply paints and chemicals, HVAC parts and tools, marking tools, and maintenance, repair and operations items, corkscrews, drills and drivers, tire inflators, air hoses, welding hoses and gauges (collectively hereinafter "brass components"). 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, 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 August 27, 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 these companies themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the companies' property and in each of California's 58 counties.

Cordially,

William Verick

## SERVICE LIST

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GOVERNMENT CENTER  
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TIMOTHY R. TOPPEN, CEO  
VEVANCE TECHNOLOGIES, INC.  
1144 EAST MARKET STREET  
AKRON, OH 44316



## PRODUCTS LIST

### **BALKAMP, INC.**

NAPA SELF STORING AIR HOSE 1/4" IN X 12' - 1/4" MALE NPT 715-1510 UPC CODE: 664766 062605 This product description pertains not only to the specific model of the product listed, but also for all units of all models of hose couplers, air or gas hoses that have components or accessories that utilize brass.

### **COILHOUSE PNEUMATICS, INC.**

MULTI-PURPOSE HOSE 1/4" ID X 12' , 1/4" MPT #R14012N UPC CODE: 029292 298308 This product description pertains not only to the specific model of the product listed, but also for all units of all models of hose couplers, air or gas hoses that have components or accessories that utilize brass.

### **DEAN & DELUCA, INC.**

GATTORNA CLASSIC CORKSCREW-VOILA ITEM #105600 This product description pertains not only to the specific model of the product listed, but also for all units of all models of utensils that utilize brass.

### **GATES CORPORATION**

NAPA 400S AIR HOSE 1/4" X 25' - 300 PSI H240 3215-6101 UPC CODE: 029769 35085 This product description pertains not only to the specific model of the product listed, but also for all units of all models of hose couplers, air or gas hoses that have components or accessories that utilize brass.

### **INNOVATIONS IN CYCLING, INC.**

ULTRAFLATE PLUS CONTROLLABLE CO2 TIRE INFLATOR RM00283 REVD UPC CODE: 708162 024253 This product description pertains not only to the specific model of the product listed, but also for all units of all models of tools and/or accessories that utilize brass.

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

#### **BRASS HOSE COUPLERS/ACCESSORIES:**

KOBALT 1/4" NPT INDUSTRIAL COUPLER #000352 UPC CODE: 879686 001492; KOBALT 25 FT DELUXE POLYURETHANE RECOIL AIR HOSE #061497 UPC CODE: 831868 002208; KOBALT 3/8" COUPLER/PLUG KIT #177219 UPC CODE: 879686 001539; KOBALT INFLATION KIT #179681 UPC CODE: 879686 001959; TASK FORCE 16PC PNEUMATIC ACCESSORY KIT ITEM# 193551 MODEL # SGY-KIT-F UPC CODE: 879686 000617; KOBALT 1/4" FIELD REPAIRABLE INDUSTRIAL COUPLER WITH CLAMP #127962 UPC CODE: 879686 001508; KOBALT 1/4" U COUPLING #129967 UPC CODE: 879686 001485; KOBALT 3/8" X 3/8" NPT COUPLING #002271 UPC CODE: 879686 001980 TASK FORCE 16PC PNEUMATIC ACCESSORY KIT ITEM# 193551 MODEL # SGY-KIT-F UPC CODE: 879686 000617 **BRASS TOOLS:** KOBALT #8 DRILL AND DRIVER #280534 UPC CODE: 051667 800939 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of hose couplers, tools and accessories that utilize components or accessories made of brass.

### **ORS NASCO, INC.**

ANCHOR TWIN WELDING HOSE 3/16" X 25' UPC CODE: 604669 169285; ANCHOR TWIN WELDING HOSE 3/16" X 12.5' UPC CODE: 604669 169513; ANCHOR BRAND TWIN WELDING HOSE FOR ACETYLENE GAS 1-EA GRADE R 1/4" X 25' B-B PART# LB254 UPC CODE: 604669 168219; ANCHOR BRAND TWIN WELDING HOSE 3/16" X 12.5' B-B PART #LB123 GRADE R UPC CODE: 604669 168103; ANCHOR BRAND TWIN WELDING HOSE 3/16" X 25' B-B PART#LB253 UPC CODE: 604669 168141; ANCHOR BRAND TWIN WELDING HOSE FOR ACETYLENE GAS GRADE R, 3/16" X 50' B-B FITTINGS PART NO# LB503 UPC CODE: 604669 168172 This product description pertains not only to the specific model of the product listed, but also for all units of all models of valves " (including the valve handles) regulators, connector hoses and accessories that utilize brass fittings, and other brass fittings that are associated with the use of flammable compressed gasses.

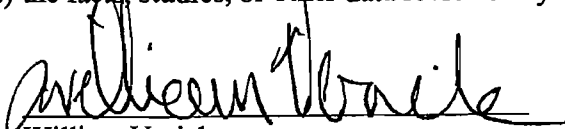
### **VEYANCE TECHNOLOGIES, INC./GOODYEAR TIRE & RUBBER COMPANY/W.W. GRAINGER, INC.**

DAYTON 3/8" IN X 2.5' PVC AIR WHIP HOSE RD #11AFJ1; DAYTON MULTI PURPOSE HOSE 1/4" X 25' LENGTH 1/4" FITTINGS ITEM 3JT63; SPEEDAIRE MULTI PURPOSE HOSE 1/4" X 50' - 1/4" FITTINGS ITEM 2Z010 These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of hose couplers, air or gas hoses that have components or accessories that utilize brass.

**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: August 27, 2009

  
William Verick

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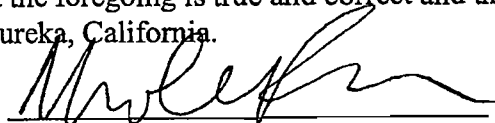
This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed 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 August 27, 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 August 27, 2009, at Eureka, California.

  
Nicole Frank