

ENDORSED
FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2009 DEC 21 AM 9:53
D. STEPPE
DEPUTY CLERK

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CASE MANAGEMENT CONFERENCE SET
MAY 21 2010 - 9:00 AM
DEPARTMENT 212

9 Attorneys for Plaintiff,
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

14 MATEEL ENVIRONMENTAL
15 JUSTICE FOUNDATION,

CASE NO. GGC-09-495337

16 Plaintiff,
17 v.

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 MENDOCINO FOREST PRODUCTS
19 COMPANY, LLC,

TOXIC TORT/ENVIRONMENTAL

20 Defendant.

21 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:
22

23 INTRODUCTION

24 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
25 failure of defendant MENDOCINO FOREST PRODUCTS COMPANY, LLC (hereinafter
26 "Defendant"), to give clear and reasonable warnings to those residents of California, who handle
27 and use post caps made from glass pieces that are connected using leaded solder or leaded came
28 (hereinafter "leaded glass post caps"), that handling and use of these products causes those

1 residents to be exposed to lead and lead compounds, lead acetate, lead phosphate, and lead
2 subacetate (hereinafter, collectively, “lead”). The types of products to which this Complaint
3 pertains are those types listed in the Proposition 65 Notice of Violation Letter that is attached to
4 and incorporated by reference into this Complaint. Lead is known to the State of California to
5 cause cancer, birth defects and male and female reproductive toxicity. Defendant distributes,
6 and/or markets leaded glass post caps. 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 leaded glass post caps. Defendant intends
10 that residents of California handle and use leaded glass post caps that Defendant markets, and/or
11 distributes. When these products are handled and used in their normally intended manner, they
12 expose people to lead. In spite of knowing that residents of California were and are being
13 exposed to these chemicals when they handle and use leaded glass post caps, Defendant did not
14 and does not provide clear and reasonable warnings that these products cause exposure to
15 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 Defendant to bring its business practices into compliance with section 25249.5 et seq.
18 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 Defendant’s
20 products. Plaintiff seeks an order that defendant identify and locate each individual person who
21 in the past has purchased leaded glass post caps and to provide to each such purchaser a clear and
22 reasonable warning that the leaded glass post caps will cause exposures to chemicals known to
23 cause birth defects.

24 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
25 of Defendant to provide clear and reasonable warnings regarding exposure to chemicals known
26 to cause cancer, birth defects and other reproductive harm.

27 PARTIES

28 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel”)

1 is a non-profit organization dedicated to, among other causes, the protection of the environment,
2 promotion of human health, environmental education, and consumer rights. Mateel is based in
3 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
4 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
5 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
6 California are regularly exposed to lead and lead compounds from leaded glass post caps
7 manufactured, distributed or marketed by Defendant and are so exposed without a clear and
8 reasonable Proposition 65 warning.

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

14 7. Plaintiff brings this enforcement action against Defendant pursuant to Health &
15 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
16 Notice of Violation Letter, dated August 27, 2009, which Mateel sent to California's Attorney
17 General. Substantively identical letters were sent to every District Attorney in the state, and to the
18 City Attorneys of every California city with a population greater than 750,000, and to defendant.
19 Attached to the Notice of Violation Letter sent to defendant was a summary of Proposition 65
20 that was prepared by California's Office of Environmental Health Hazard Assessment. In
21 addition, each Notice of Violation Letter plaintiff sent was accompanied by a Certificate of
22 Service attesting to the service of the Notice of Violation Letter on each entity which received it.
23 Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of Merit attesting
24 to the reasonable and meritorious basis for the action was also sent with each Notice of Violation
25 Letter. Factual information sufficient to establish the basis of the Certificate of Merit was
26 enclosed with the Notice of Violation Letter Mateel sent to the Attorney General.

27 8. Defendant employs more than ten people.
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JURISDICTION

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

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

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

FIRST CAUSE OF ACTION
(Claim for Injunctive Relief)

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

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

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

15. Since at least August 27, 2006, Defendant has engaged in conduct that violates

1 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
2 intentionally exposing to the above mentioned toxic chemicals, those California residents who
3 handle and use leaded glass post caps. The normally intended use of leaded glass post caps
4 causes exposure to lead and lead compounds, which are chemicals known to the State of
5 California to cause cancer, birth defects and other reproductive harm. Defendant has not
6 provided clear and reasonable warnings, within the meaning of Health & Safety Code Sections
7 25249.6 and 25249.11.

8 16. At all times relevant to this action, Defendant knew that the leaded glass post caps
9 it, distributed or marketed were causing exposures to lead and lead compounds. Defendant
10 intended that residents of California handle and use leaded glass post caps in such ways as would
11 lead to significant exposures to these chemicals.

12 17. By the above described acts, Defendant has violated Cal. Health & Safety Code
13 § 25249.6 and is therefore subject to an injunction ordering it to stop violating Proposition 65, to
14 provide warnings to all present and future customers and to provide warnings to its past
15 customers who purchased defendant's products without receiving a clear and reasonable warning.

16 SECOND CAUSE OF ACTION
17 (Claim for Civil Penalties)

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

20 19. By the above described acts, Defendant is liable and should be liable pursuant to
21 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
22 exposed without proper warning to lead and lead compounds from the handling or use of
23 Defendant's leaded glass post caps.

24 PRAYER FOR RELIEF

25 Wherefore, plaintiff prays for judgment against DEFENDANT, as follows:

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

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

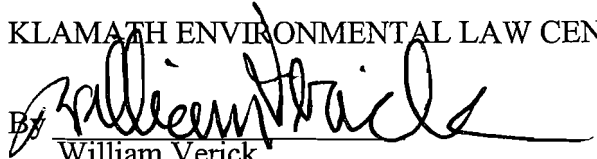
3. That Defendant be ordered to identify and locate each individual who purchased leaded glass post caps and provide a warning to each such person that the leaded glass post caps the person purchased will expose that person to chemicals known to cause birth defects.

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

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

Dated: December 9, 2009

KLAMATH ENVIRONMENTAL LAW CENTER



William Verick
Attorney for Plaintiff
Mateel Environmental Justice Foundation



Klamath

ENVIRONMENTAL
LAW CENTER

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 MENDOCINO FOREST PRODUCTS COMPANY, LLC (hereinafter "MFP") 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 products that are, or that utilize components made from, leaded stained glass (hereinafter "leaded stained glass") which MFP either markets or manufactures. A specific example of which is: TIFFANY GRAPE MILÓTGRI 4X4 POST CAP UPC CODE: 737164 888167 Though a specific model or UPC number may be given as an example, this notice pertains to all similar types of leaded stained glass. The solder, came, and other parts used to manufacture this leaded stained glass 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 when they assemble, handle, clean, or otherwise use these products. Lead is transferred from the 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 product, from oral contact 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. MFP 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 August 27, 2006, and will continue every day until the lead is removed from the leaded stained glass, 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 leaded stained glass made outside of California, except as to workplaces MFP itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off MFP's private business property and in each of California's 58 counties.

Cordially,

William Verick

SERVICE LIST

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FAIRFIELD, CA 94533

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600 ADMINISTRATION DR. #212J
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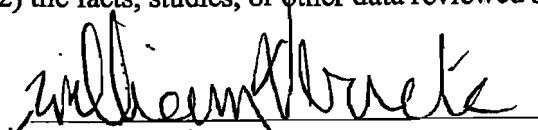
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215 5TH ST.
MARYSVILLE, CA 95901

RICHARD HIGGENSBOTTOM, PRESIDENT
MENDOCINO FOREST PRODUCTS COMPANY, LLC
6500 DURABLE MILL ROAD
CALPELLA, CA 95418

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

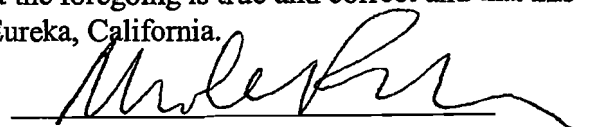

William Verick

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 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