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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,

16 Plaintiff,

17 v.

18 MENDOCINO FOREST PRODUCTS
19 COMPANY, LLC, and MAINE
20 ORNAMENTAL LLC

21 Defendant.

CASE NO. 09-495337

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES

TOXIC TORT/ENVIRONMENTAL

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 MENDOCINO FOREST PRODUCTS COMPANY, LLC and MAINE
26 ORNAMENTA LLC (hereinafter "Defendants"), to give clear and reasonable warnings to those
27 residents of California, who handle and use post caps made from glass pieces that are connected
28 using leaded solder or leaded came (hereinafter "leaded glass post caps"), that handling and use

COMPLAINT FOR INJUNCTION
AND CIVIL PENALTIES

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAR 18 2010

CLERK OF THE COURT
BY: WESLEY RAMIREZ
Deputy Clerk

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. Defendants are each persons doing business within the meaning of Health &
10 Safety Code Section 25249.11. Defendants are businesses that distribute, and/or market leaded
11 glass post caps in California, including San Francisco County. Distribution and/or marketing of
12 these products in San Francisco County, and/or to people who live in San Francisco County,
13 causes people to be exposed to lead and lead compounds while they are physically present in San
14 Francisco County.

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

1 warning to such individual prior to the exposure.

2 15. Since at least August 27, 2006, Defendants have engaged in conduct that violates
3 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
4 intentionally exposing to the above mentioned toxic chemicals, those California residents who
5 handle and use leaded glass post caps. The normally intended use of leaded glass post caps
6 causes exposure to lead and lead compounds, which are chemicals known to the State of
7 California to cause cancer, birth defects and other reproductive harm. Defendants have not
8 provided clear and reasonable warnings, within the meaning of Health & Safety Code Sections
9 25249.6 and 25249.11.

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

14 17. By the above described acts, Defendants have violated Cal. Health & Safety Code
15 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
16 65, to provide warnings to all present and future customers and to provide warnings to its past
17 customers who purchased defendants' products without receiving a clear and reasonable
18 warning.

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

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

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

27 **PRAAYER FOR RELIEF**

28 Wherefore, plaintiff prays for judgment against DEFENDANTS, as follows:



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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DEPUTY ATTORNEY GENERAL
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OAKLAND CA 94612-0550

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SAN FRANCISCO, CA 94102

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25 COUNTY CENTER DR.
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SAN RAFAEL, CA 94903

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PO BOX 1000
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MERCED, CA 95340

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SALINAS, CA 93902

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P.O. BOX 720
NAPA, CA 94559-0720

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NEVADA CITY, CA 95959

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401 CIVIC CENTER DR WEST
SANTA ANA, CA 92701

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COUNTY OF PLACER
10810 JUSTICE CENTER DR., STE 240
ROSEVILLE, CA 95678

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QUINCY, CA 95971

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RIVERSIDE, CA 92501

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901 G STREET
SACRAMENTO, CA 95814

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COUNTY OF SAN BENITO
419 4TH ST
HOLLISTER, CA 95023

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BERNARDINO
316 MT. VIEW AVE.
SAN BERNARDINO, CA 92415-0004

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO
330 W. BROADWAY, SUITE 1100
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN FRANCISCO
650 BRYANT ST #322
SAN FRANCISCO, CA 94103

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN JOAQUIN
222 E. WEBER AVE #202
STOCKTON, CA 95202

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
REDWOOD CITY, CA 94063

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA
1112 SANTA BARBARA ST.
SANTA BARBARA, CA 93101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CLARA
70 W. HEDDING ST.
SAN JOSE, CA 95110

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CRUZ
701 OCEAN ST. #200
SANTA CRUZ, CA 95060

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SHASTA
1525 COURT ST.
REDDING, CA 96001

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COUNTY OF SIERRA
P.O. BOX 457
DOWNTOWNVILLE, CA 95936

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
P.O. BOX 986
YREKA, CA 96097

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO
600 UNION AVE
FAIRFIELD, CA 94533

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
SANTA ROSA, CA 95403

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF STANISLAUS
1100 I ST. #200
MODESTO, CA 95354

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SUTTER
1160 CIVIC CENTER BLVD. #A
YUBA CITY, CA 95993

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COUNTY OF TEHAMA
P.O. BOX 319
REDBLUFF, CA 96080

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TRINITY
P.O. BOX 310
WEAVERVILLE, CA 96093

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COUNTY OF TULARE
COURTHOUSE #224
VISALLA, CA 93291

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COUNTY OF TUOLUMNE
2 S. GREEN ST.
SONORA, CA 95370

VENTURA COUNTY DISTRICT ATTORNEY'S
OFFICE
800 SOUTH VICTORIA AVE
VENTURA, CA 93009

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
301 SECOND STREET
WOODLAND, CA 95695

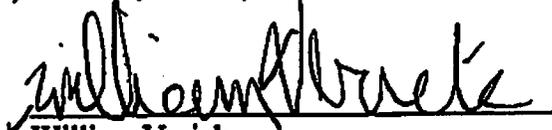
OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

RICHARD HIGGENBOTTOM, PRESIDENT
MENDOCINO FOREST PRODUCTS COMPANY, LLC
6300 DURABLE MILL ROAD
CALPPELLA, 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

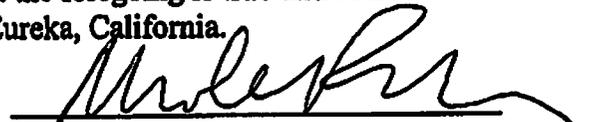

William Verick

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



November 24, 2009

PROPOSITION 65 ENFORCEMENT REPORTING
ATTENTION: PROP 65 COORDINATOR
1515 CLAY STREET, SUITE 2000
P.O. BOX 70550
OAKLAND CA 94612-0550

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") give you notice that your company Maine Ornamental LLC (hereinafter "Maine") 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 Maine either markets or manufactures. Specific examples of which are: 4 x 4 SOLAR TIFFANY MISSION CAP, UPC # 090489 099435; TIFFANY-STYLE DELICATE POST CAP CEDAR - 4X4, #76718-115791, UPC # 753904 900050; MAINE ORNAMENTAL SOLAR TIFFANY-STYLE SUNFLOWER POST CAP, CEDAR, #STSCI 81060, UPC # 090489 099350. 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. Maine 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 November 24, 2006, and will continue every day until the lead is removed from the stained glass 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 leaded stained glass made outside of California, except as to workplaces Maine itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Maine's private business property and in each of California's 58 counties.

Cordially,

William Verick

424 First Street, Eureka, CA 95501 • 707.268.8900 (phone) 707.268.8901 (fax)

SERVICE LIST

PROPOSITION 65 ENFORCEMENT
REPORTING
ATTENTION: PROP 65 COORDINATOR
1515 CLAY STREET, SUITE 2000
POST OFFICE BOX 70550
OAKLAND, CA 94612-0550

OFFICE OF THE CITY ATTORNEY
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505 14TH ST 12TH FLOOR
OAKLAND, CA 94612

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SAN RAFAEL, CA 94903

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SACRAMENTO, CA 95814

OFFICE OF THE DISTRICT ATTORNEY
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419 4TH ST
HOLLISTER, CA 95023

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BERNARDINO
316 MT. VIEW AVE.
SAN BERNARDINO, CA 92415-0004

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COUNTY OF SAN DIEGO
330 W. BROADWAY, SUITE 1100
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN FRANCISCO
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COUNTY OF SAN JOAQUIN
222 E. WEBER AVE #202
STOCKTON, CA 95202

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN MATEO
HALL OF JUSTICE AND RECORDS
REDWOOD CITY, CA 94063

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA BARBARA
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OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CLARA
70 W. HEDDING ST.
SAN JOSE, CA 95110

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SANTA CRUZ
701 OCEAN ST. #200
SANTA CRUZ, CA 95060

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SHASTA
1525 COURT ST.
REDDING, CA 96001

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SIERRA
P.O. BOX 457
DOWNIEVILLE, CA 95936

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SISKIYOU
P.O. BOX 986
YREKA, CA 96097

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SOLANO
600 UNION AVE
FAIRFIELD, CA 94533

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SONOMA
600 ADMINISTRATION DR. #212J
SANTA ROSA, CA 95403

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF STANISLAUS
1100 J ST. #200
MODESTO, CA 95354

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SUTTER
1160 CIVIC CENTER BLVD. #A
YUBA CITY, CA 95993

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COUNTY OF TEHAMA
P.O. BOX 519
REDBLUFF, CA 96080

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TERRY
P.O. BOX 310
WEAVERVILLE, CA 96093

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE
COURTHOUSE #224
VISALIA, CA 93291

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TUOLUMNE
2 S. GREEN ST.
SONORA, CA 95370

VENTURA COUNTY DISTRICT ATTORNEY'S
OFFICE
800 SOUTH VICTORIA AVE
VENTURA, CA 93009

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YOLO
301 SECOND STREET
WOODLAND, CA 95695

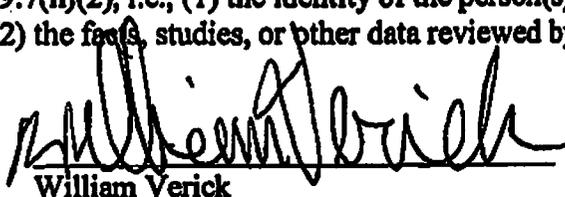
OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

MATTHEW J MOSSAD, CEO
MAINE ORNAMENTAL LLC
2801 E BELTLINE AVE NE
GRAND RAPIDS, MI 49525

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: November 24, 2009



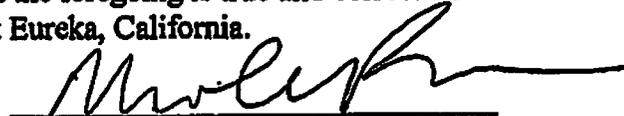
William Verick

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 November 24, 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 November 24, 2009, at Eureka, California.



Nicole Frank