

FILED
SUPERIOR COURT
2010 FEB -4 AM 6:00
D. STEPPE
CLERK

CASE MANAGEMENT CONFERENCE SET

JUL 09 2010 - 9:00 AM

DEPARTMENT 212

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10 Attorneys for Plaintiff,
11 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

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

15 MATEEL ENVIRONMENTAL
16 JUSTICE FOUNDATION,

CASE NO.
CGC-10-496662

17 Plaintiff,

18 v.

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

19 ORCHARD SUPPLY HARDWARE
20 CORPORATION,

21 Defendant.

TOXIC TORT/ENVIRONMENTAL

22
23 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

24 INTRODUCTION

25 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
26 failure of defendant ORCHARD SUPPLY HARDWARE CORPORATION (hereinafter
27 "Defendant"), to give clear and reasonable warnings to those residents of California, who handle
28 and use products the outer surface of which has been galvanized with a galvanizing material

1 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
2 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
3 California are regularly exposed to lead and lead compounds from Leaded Galvanized Products
4 manufactured, distributed or marketed by Defendant and are so exposed without a clear and
5 reasonable Proposition 65 warning.

6 6. Defendant is a person doing business within the meaning of Health & Safety Code
7 Section 25249.11. Defendant is a business that manufactures, distributes, and/or markets Leaded
8 Galvanized Products in California, including the City and County of San Francisco.
9 Manufacture, distribution and/or marketing of these products in the City and County of San
10 Francisco and/or to people who live in San Francisco, causes people to be exposed to lead and
11 lead compounds while they are physically present in the City and County of San Francisco.

12 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &
13 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
14 60-day Notice letter, dated November 24, 2009 which Mateel sent to California's Attorney
15 General. Substantially identical letters were sent to every District Attorney in the state, and to the
16 City Attorneys of every California city with a population greater than 750,000. On November
17 24, 2009, Mateel sent to Defendant a letter substantively identical to the Notice letter it sent on
18 that date to the Attorney General. Attached to the 60-Day Notice Letter sent to the Defendant
19 was a summary of Proposition 65 that was prepared by California's Office of Environmental
20 Health Hazard Assessment. In addition, each 60-Day Notice Letter plaintiff sent was
21 accompanied by a Certificate of Service attesting to the service of the 60-Day Notice Letter on
22 each entity which received it. Pursuant to California Health & Safety Code Section 25249.7(d), a
23 Certificate of Merit attesting to the reasonable and meritorious basis for the action was also sent
24 with each 60-Day Notice Letter. Factual information sufficient to establish the basis of the
25 Certificate of Merit was enclosed with the 60-Day Notice letters Mateel sent to the Attorney
26 General on the two dates.

27 8. Defendant is a business that employs more than ten people.
28

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

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

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

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

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

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

25 PRAYER FOR RELIEF

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

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

1 Code;

2 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
3 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
4 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
5 Defendant's manufacturing, distributing or marketing of Leaded Galvanized Products;

6 3. That Defendant be ordered to identify and locate each individual who purchased
7 Leaded Galvanized Products and provide a warning to each such person that the Leaded
8 Galvanized Products the person purchased will expose that person to chemicals known to cause
9 birth defects.

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

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

13 Dated: February 2, 2010

KLAMATH ENVIRONMENTAL LAW CENTER

14
15
16 By 

17 William Verick
18 Attorney for Plaintiff
19 Mateel Environmental Justice Foundation
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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 Orchard Supply Hardware Stores Corporation (hereinafter "OSH") 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 galvanized chains (collectively hereinafter, "galvanized products"). Specific examples of the specific types of products at issue are 1/2" HOT GALVANIZED 4' COIL CHAIN, SKU #12081669; PROOF COIL CHAIN 5/16", SKU 12081636 ; GALVANIZED CHAIN SKU #1208-1644; GALVANIZED CHAIN SKU# 208-1636; GALVANIZED CHAIN SKU# 208-1669; 1/2" GALVANIZED CHAIN. These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of galvanized chains. The surface zinc coating on these galvanized products contains lead as an intended constituent. Lead is a chemical known to cause cancer, birth defects and other reproductive harm. California residents are exposed to lead when they handle these galvanized products while installing them and while using them for their intended purpose. Lead is transferred from the leaded-zinc coating 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 galvanizing, 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. OSH 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 galvanized 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 galvanized products made outside of California, except as to workplaces OSH itself maintains in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off Cooper Tools, Inc.'s property and in each of California's 58 counties.

Cordially,

William Verick

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

OFFICE OF THE CITY ATTORNEY
CITY OF SAN FRANCISCO
CITY HALL ROOM 206
400 VAN NESS
SAN FRANCISCO, CA 94102

OFFICE OF THE CITY ATTORNEY
CITY OF SACRAMENTO
PO BOX 1948
SACRAMENTO, CA 95812-1948

OFFICE OF THE CITY ATTORNEY
CITY OF SAN JOSE
200 EAST SANTA CLARA STREET
SAN JOSE, CA 95113

OFFICE OF THE CITY ATTORNEY
CITY OF LOS ANGELES
200 N. MAIN ST.
LOS ANGELES, CA 90012

OFFICE OF THE CITY ATTORNEY
CITY OF SAN DIEGO CONSUMER & ENVIRONMENTAL PROTECTION
1200 THIRD AVENUE, SUITE 700
SAN DIEGO, CA 92101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ALAMEDA
1225 FALLON STREET ROOM 900
OAKLAND, CA 94612

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ALPINE
P.O. BOX 248
MARKLEEVILLE, CA 96120

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF AMADOR
708 COURT STREET
JACKSON, CA 95642

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF BUTTE
25 COUNTY CENTER DR.
OROVILLE, CA 95965

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF CALAVERAS
GOVERNMENT CENTER
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF COLUSA
547 MARKET STREET
COLUSA, CA 95932

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF CONTRA COSTA
P.O. BOX 670
MARTINEZ, CA 94553

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF DEL NORTE
450 H ST #171
CRESCENT CITY, CA 95531

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF EL DORADO
515 MAIN ST.
PLACERVILLE, CA 95667

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF FRESNO
2220 TULARE ST #1000
FRESNO, CA 93721

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF GLENN
P.O. BOX 430
WILLOWS, CA 95988

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF HUMBOLDT
825 5TH ST.
EUREKA, CA 95501

COUNTY OF IMPERIAL
COURTHOUSE, FLOOR 2
939 W. MAIN ST
EL CENTRO, CA 92243

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF INYO
P.O. DRAWER D
INDEPENDENCE, CA 93526

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF KERN
1215 TRUXTUN AVE. FLOOR 4
BAKERSFIELD, CA 93301

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF KINGS
1400 W. LACEY BLVD.
HANFORD, CA 93230

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LAKE
255 N. FORBES ST # 424
LAKEPORT, CA 95453

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LASSEN
220 SOUTH LASSEN ST. STE 8
SUSANVILLE, CA 96130

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LOS ANGELES
18000 CRIMINAL COURTS BUILDING
210 W. TEMPLE ST.
LOS ANGELES, CA 90012

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MADERA
209 W. YOSEMITE AVE.
MADERA, CA 93637

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MARIN
HALL OF JUSTICE #183
SAN RAFAEL, CA 94903

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MARIPOSA
P.O. BOX 730
MARIPOSA, CA 95338

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MENDOCINO
PO BOX 1000
UKIAH, CA 95482

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MERCED
2222 M ST.
MERCED, CA 95340

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MODOC
204 SOUTH COURT STREET
ALTURAS, CA 96101

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MONO
P.O. BOX 617
BRIDGEPORT, CA 93517

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF MONTEREY
240 CHURCH STREET
P.O. BOX 1131
SALINAS, CA 93902

COUNTY OF NAPA
931 PARKWAY MALL
P.O. BOX 720
NAPA, CA 94559-0720

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF NEVADA
110 UNION STREET
NEVADA CITY, CA 95959

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF ORANGE
401 CIVIC CENTER DR. WEST
SANTA ANA, CA 92701

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLACER
10810 JUSTICE CENTER DR., STE 240
ROSEVILLE, CA 95678

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF PLUMAS
520 MAIN STREET #404
QUINCY, CA 95971

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF RIVERSIDE
4075 MAIN ST.
RIVERSIDE, CA 92501

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SACRAMENTO
901 G STREET
SACRAMENTO, CA 95814

OFFICE OF THE DISTRICT ATTORNEY
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
850 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

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 I ST. #200
MODESTO, CA 95354

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

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TEHAMA
P.O. BOX 519
REDBLUFF, CA 96080

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TRINITY
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

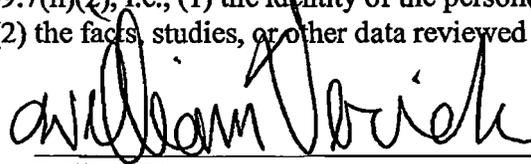
OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF YUBA
215 5TH ST.
MARYSVILLE, CA 95901

ROBERT M LYNCH, CEO
ORCHARD SUPPLY HARDWARE STORES CORPORATION
3333 BEVERLY ROAD
HOFFMAN ESTATES, IL 60179

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



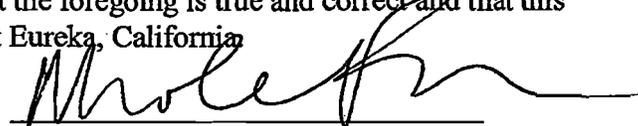
William Verick

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