

SUMMONS ISSUED
FILED
San Francisco County Superior Court

JUN - 8 2011

CLERK OF THE COURT

By: [Signature]
Deputy Clerk

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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-11-511553**

17 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 v.

19 ACE HARDWARE CORPORATION,
20

TOXIC TORT/ENVIRONMENTAL

21 Defendant.

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 ACE HARDWARE CORPORATION (hereinafter "Ace" or "Defendant"),
26 to give clear and reasonable warnings to those residents of California, who handle and use lead
27 wool. Lead wool is akin to "steel wool," except that is literally made from lead fibers. The lead
28 fibers, which users of the product touch, are basically pure lead. Ace does not warn its California

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

5 10. This Court has jurisdiction over Defendant because it is a business that has
6 sufficient minimum contacts in California and within the City and County of San Francisco.
7 Defendant intentionally availed itself of the California and San Francisco County markets for
8 lead wool. It is thus consistent with traditional notions of fair play and substantial justice for the
9 San Francisco Superior Court to exercise jurisdiction over Defendant.

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

15 FIRST CAUSE OF ACTION
16 (Claim for Injunctive Relief)

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

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

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

26 15. Since at least February 17, 2008, Defendant has engaged in conduct that violates
27 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
28 intentionally exposing to the above mentioned toxic chemicals, those California residents who

1 handle and use lead wool. The normally intended use of lead wool causes exposure to lead and
2 lead compounds, which are chemicals known to the State of California to cause cancer, birth
3 defects and other reproductive harm. Defendant has not provided clear and reasonable warnings,
4 within the meaning of Health & Safety Code Sections 25249.6 and 25249.11.

5 16. At all times relevant to this action, Defendant knew that the lead wool it,
6 distributed or marketed was causing exposures to lead and lead compounds. Defendant intended
7 that residents of California handle and use lead wool in such ways as would lead to significant
8 exposures to these chemicals.

9 17. By the above described acts, Defendant has violated Cal. Health & Safety Code
10 § 25249.6 and is therefore subject to an injunction ordering it to stop violating Proposition 65, to
11 provide warnings to all present and future customers and to provide warnings to its past
12 customers who purchased defendant's lead wool product without receiving a clear and reasonable
13 warning.

14 SECOND CAUSE OF ACTION
15 (Claim for Civil Penalties)

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

18 19. By the above described acts, Defendant is liable and should be liable pursuant to
19 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
20 exposed without proper warning to lead and lead compounds from contact with Defendant's lead
21 wool.

22 PRAYER FOR RELIEF

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

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

27 2. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
28 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section

1 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
2 Defendant's distributing or marketing of lead wool;

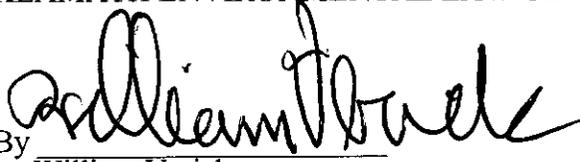
3 3. That Defendant be ordered to identify and locate each individual who purchased
4 lead wool and provide a warning to each such person that the lead wool the person purchased
5 will expose that person to chemicals known to cause birth defects.

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

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

9 Dated: June 1, 2011

KLAMATH ENVIRONMENTAL LAW CENTER

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11 

12 By William Verick
13 William Verick
14 Attorney for Plaintiff
15 Mateel Environmental Justice Foundation
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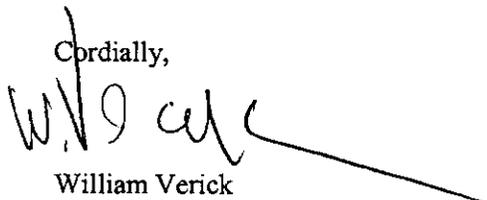
February 17, 2011

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 the private companies listed 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 for both Mateel and this office. The above-referenced violations occur when California residents come into contact with lead wool, which is made of lead fibers. The lead fibers, which users of the product touch, contain high levels of lead and lead compounds ("lead"), chemicals known to cause cancer, birth defects, and other reproductive harm. These companies either make or market this lead wool. People are exposed to lead when they use this lead wool and their skin comes into contact with the lead fibers. Lead is transferred from the lead wool to the hands of the people using it. The lead then enters their bodies when it is absorbed directly through the skin, through mucous membranes, or through cuts and/or abrasions when people touch their hands to their mouths and other mucous membranes, or when they touch cigarettes or food and then smoke the cigarettes or ingest the food. These exposures thus occur via the dermal absorption, mucous membrane, subcutaneous, inhalation and ingestion routes. These companies did not and do not provide people with clear and reasonable warnings before they expose them to lead. The above referenced violations have occurred every day since at least February 17, 2008, and will continue every day until Proposition 65-compliant warnings are given. These 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 of this lead wool manufactured outside of California, except as to workplaces these companies themselves maintain in California.

Cordially,


William Verick

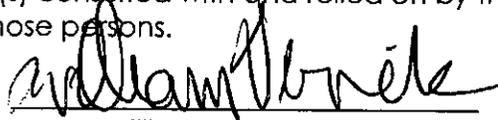
SERVICE LIST

| | | | |
|--|---|---|---|
| <p>PROPOSITION 65 ENFORCEMENT REPORTING ATTENTION: PROP 65 COORDINATOR 1515 CLAY STREET, SUITE 2000 POST OFFICE BOX 70550 OAKLAND, CA 94612-0550</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF HUMBOLDT 825 5TH ST. EUREKA, CA 95501</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ORANGE 401 CIVIC CENTER DR WEST SANTA ANA, CA 92701</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SONOMA 600 ADMINISTRATION DR. #212J SANTA ROSA, CA 95403</p> |
| <p>OFFICE OF THE CITY ATTORNEY CITY OF OAKLAND 505 14TH ST 12TH FLOOR OAKLAND, CA 94612</p> | <p>COUNTY OF IMPERIAL COURTHOUSE, FLOOR 2 939 W. MAIN ST EL CENTRO, CA 92243</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLACER 10810 JUSTICE CENTER DR. STE 240 ROSEVILLE, CA 95678</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF STANISLAUS 1100 I ST. #200 MODESTO, CA 95354</p> |
| <p>OFFICE OF THE CITY ATTORNEY CITY OF SAN FRANCISCO CITY HALL ROOM 206 400 VAN NESS SAN FRANCISCO, CA 94102</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF INYO P.O. DRAWER D INDEPENDENCE, CA 93526</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF PLUMAS 520 MAIN STREET #404 QUINCY, CA 95971</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SUITER 1160 CIVIC CENTER BLVD. #A YUBA CITY, CA 95993</p> |
| <p>OFFICE OF THE CITY ATTORNEY CITY OF SACRAMENTO PO BOX 1948 SACRAMENTO, CA 95812-1948</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KERN 1215 TRUXTUN AVE. FLOOR 4 BAKERSFIELD, CA 93301</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF RIVERSIDE 4075 MAIN ST. RIVERSIDE, CA 92501</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TEHAMA P.O. BOX 519 REDBLUFF, CA 96080</p> |
| <p>OFFICE OF THE CITY ATTORNEY CITY OF SAN JOSE 200 EAST SANTA CLARA STREET SAN JOSE, CA 95113</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF KINGS 1400 W. LACEY BLVD. HANFORD, CA 93230</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SACRAMENTO 901 G STREET SACRAMENTO, CA 95814</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TRINITY P.O. BOX 310 WEAVERVILLE, CA 96093</p> |
| <p>OFFICE OF THE CITY ATTORNEY CITY OF LOS ANGELES 200 N. MAIN ST. LOS ANGELES, CA 90012</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LAKE 255 N. FORBES ST # 424 LAKEPORT, CA 95453</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BENITO 419 4TH ST HOLLISTER, CA 95023</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TULARE COURTHOUSE #224 VISALIA, CA 93291</p> |
| <p>OFFICE OF THE CITY ATTORNEY CITY OF SAN DIEGO CONSUMER & ENVIRONMENTAL PROTECTION 1200 THIRD AVENUE, SUITE 700 SAN DIEGO, CA 92101</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LASSEN 220 SOUTH LASSEN ST. STE 8 SUSANVILLE, CA 96130</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN BERNARDINO 316 MT. VIEW AVE. SAN BERNARDINO, CA 92415-0004</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF TUOLUMNE 2 S. GREEN ST. SONORA, CA 95370</p> |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF ALAMEDA 1225 FALLON STREET ROOM 900 OAKLAND, CA 94612</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF LOS ANGELES 18000 CRIMINAL COURTS BUILDING 210 W. TEMPLE ST. LOS ANGELES, CA 90012</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO 330 W. BROADWAY, SUITE 1100 SAN DIEGO, CA 92101</p> | <p>VENTURA COUNTY DISTRICT ATTORNEY'S OFFICE 800 SOUTH VICTORIA AVE VENTURA, CA 93009</p> |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MADERA 209 W. YOSEMITE AVE. MADERA, CA 93637</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIN HALL OF JUSTICE #183 SAN RAFAEL, CA 94903</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN FRANCISCO 850 BRYANT ST #322 SAN FRANCISCO, CA 94103</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YOLO 301 SECOND STREET WOODLAND, CA 95695</p> |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 248 MARKLEEVILLE, CA 96120</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MARIPOSA P.O. BOX 730 MARIPOSA, CA 95338</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN JOAQUIN 222 E. WEBER AVE #202 STOCKTON, CA 95202</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF YUBA 215 5TH ST. MARYSVILLE, CA 95901</p> |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF AMADOR 708 COURT STREET JACKSON, CA 95642</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MENDOCINO PO BOX 1000 UKIAH, CA 95482</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN MATEO HALL OF JUSTICE AND RECORDS REDWOOD CITY, CA 94063</p> | <p>RAY A GRIFFITH, CEO ACE HARDWARE CORPORATION 2200 KENSINGTON COURT OAK BROOK, IL 60523-2103</p> |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF BUTTE 25 COUNTY CENTER DR. OROVILLE, CA 95965</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CALAVERAS GOVERNMENT CENTER 891 MOUNTAIN RANCH ROAD SAN ANDREAS, CA 95249</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA BARBARA 1112 SANTA BARBARA ST. SANTA BARBARA, CA 93101</p> | <p>JEFFREY O HOGAN, CEO ASHBY LUMBER COMPANY 5818 MCANDREW DR OAKLAND, CA 94611-3133</p> |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF COLUSA 547 MARKET STREET COLUSA, CA 95932</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF CONTRA COSTA P.O. BOX 670 MARTINEZ, CA 94553</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CLARA 70 W. HEDDING ST. SAN JOSE, CA 95110</p> | |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF DEL NORTE 450 H ST #171 CRESCENT CITY, CA 95531</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONO P.O. BOX 617 BRIDGEPORT, CA 93517</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SANTA CRUZ 701 OCEAN ST. #200 SANTA CRUZ, CA 95060</p> | |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF EL DORADO 515 MAIN ST. PLACERVILLE, CA 95667</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MERCED 2222 M ST. MERCED, CA 95340</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SHASTA 1525 COURT ST. REDDING, CA 96001</p> | |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF FRESNO 2220 TULARE ST #1000 FRESNO, CA 93721</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NAPA 931 PARKWAY MALL P.O. BOX 720 NAPA, CA 94559-0720</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SIERRA P.O. BOX 457 DOWNIEVILLE, CA 95936</p> | |
| <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF GLENN P.O. BOX 430 WILLOWS, CA 95988</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF MONTEREY 240 CHURCH STREET P.O. BOX 1131 SALINAS, CA 93902</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SISKIYOU P.O. BOX 986 YREKA, CA 96097</p> | |
| | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF NEVADA 110 UNION STREET NEVADA CITY, CA 95959</p> | <p>OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SOLANO 600 UNION AVE FAIRFIELD, CA 94533</p> | |

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: February 17, 2011

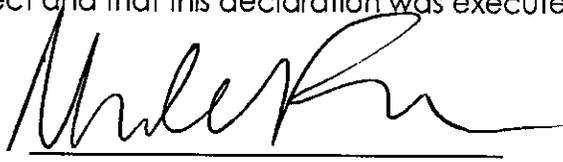

William Verick

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 February 17, 2011, I caused the attached NOTICE OF VIOLATION 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 NOTICE OF VIOLATION 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 February 17, 2011, at Eureka, California.


Nicole Frank