

APR 11 2011

ALAN CARLSON, Clerk of the Court

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9 Attorneys for Plaintiff,
10 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ORANGE
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL
15 JUSTICE FOUNDATION,
16 Plaintiff,

CASE NO. **30-2011**
00465670

17 v.

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 DISNEY INCORPORATED; DISNEY
19 WORLDWIDE SERVICES, INC.;
20 DISNEYLAND INTERNATIONAL; THE
WALT DISNEY COMPANY; WALT
21 DISNEY INTERNATIONAL; and WALT
DISNEY PARKS & RESORTS U.S., INC.
22 Defendants.

BUSINESS TORT/UNFAIR BUSINESS
PRACTICE

23 _____ /
24 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

25 INTRODUCTION

26 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
27 failure of defendants DISNEY INCORPORATED; DISNEY WORLDWIDE SERVICES, INC.;
28 DISNEYLAND INTERNATIONAL; THE WALT DISNEY COMPANY; WALT DISNEY

1 INTERNATIONAL; and WALT DISNEY PARKS & RESORTS U.S., INC. (hereinafter
2 “Defendants”), to give clear and reasonable warnings to those residents of California, who attend
3 amusement parks operated by Defendants and come into contact with brass stanchions and chains
4 (hereinafter “stanchions and chains”) used for crowd or line control. The brass alloy used in the
5 manufacture of these brass stanchions and chains contains lead and lead compounds. Lead and
6 lead compounds are known to the State of California to cause cancer, birth defects and male and
7 female reproductive toxicity. When people come in contact with these stanchions and chains,
8 they are exposed to lead.

9 2. Defendants operate “Disneyland”, an amusement park located in Anaheim,
10 California. Defendants intend that residents of California handle and touch the stanchions and
11 chains located at their parks when they visit the attractions identified on the attached notice letter.
12 When these stanchions and chains are handled and touched in their normally intended manner
13 they expose people to lead. In spite of knowing that residents of California were and are being
14 exposed to this toxic heavy metal when they handle or touch these stanchions and chains,
15 Defendants did not and do not provide clear and reasonable warnings that these products cause
16 exposure to chemicals known to cause cancer, birth defects and other reproductive harm.

17 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
18 to compel Defendants to bring their business practices into compliance with section 25249.5 et
19 seq. by providing a clear and reasonable warning to each individual who has been and who in the
20 future may be exposed to the above mentioned toxic chemicals by coming in contact with
21 Defendants’ stanchions and chains.

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

25 PARTIES

26 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“Mateel”)
27 is a non-profit organization dedicated to, among other causes, the protection of the environment,
28 promotion of human health, environmental education, and consumer rights. Mateel is based in

1 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
2 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
3 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
4 California are exposed to lead and lead compounds, without a clear and reasonable Proposition
5 65 warning, from the stanchions and chains present at Disneyland when they visit the park and
6 visit the attractions identified on the attached notice letter.

7 6. Defendants are persons doing business within the meaning of Health & Safety
8 Code Section 25249.11. Defendants are businesses that own, operate, and promote "Disneyland,
9 and amusement park located in Anaheim, California, in Orange County. The exposures to lead
10 resulting from the brass stanchions and chains located at "Disneyland" occur in Orange County.

11 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &
12 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference are a copies of
13 the Notice of Violation letter, dated December 30, 2010, which Mateel sent to California's
14 Attorney General. A substantively identical letter was sent to the District Attorney of Orange
15 County. Attached to the Notice of Violation Letter sent to each defendant was a summary of
16 Proposition 65 that was prepared by California's Office of Environmental Health Hazard
17 Assessment. In addition, each Notice of Violation Letter plaintiff sent was accompanied by a
18 Certificate of Service attesting to the service of the Notice of Violation Letter on each entity that
19 received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of
20 Merit attesting to the reasonable and meritorious basis for the action was also sent with each
21 Notice of Violation Letter. Factual information sufficient to establish the basis of the Certificate
22 of Merit was enclosed with the Notice of Violation letter Mateel sent to the Attorney General.

23 8. Each defendant employs more than ten people.

24 JURISDICTION

25 9. The Court has jurisdiction over this action pursuant to California Health & Safety
26 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
27 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
28 of the Health & Safety Code, which contains the statutes under which this action is brought, does

1 not grant jurisdiction to any other trial court.

2 10. This Court also has jurisdiction over Defendants because they are businesses that
3 have sufficient minimum contacts in California and within Orange County. Defendants
4 intentionally availed themselves of the legal protections offered by California and by Orange
5 County by locating their amusement park in Anaheim, within the geographical confines of
6 Orange County, California. It is thus consistent with traditional notions of fair play and
7 substantial justice for the Orange County Superior Court to exercise jurisdiction over Defendants.

8 11. Venue is proper in this Court because the location where exposures to lead have
9 occurred due to Defendants' use of brass stanchions and chains at their amusement park is within
10 Orange County. Liability for Plaintiff's causes of action, or some parts thereof, has accordingly
11 arisen in Orange County during the times relevant to this Complaint and Plaintiff seeks civil
12 penalties imposed by statute.

13 FIRST CAUSE OF ACTION
14 (Claim for Injunctive Relief)

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

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

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

24 15. Since at least three years prior to the Notice of Violation Letters, Defendants have
25 engaged in conduct that violates Health and Safety Code Section 25249.6 et seq. This conduct
26 includes knowingly and intentionally exposing to the above mentioned toxic chemicals, those
27 California residents who handle or touch brass stanchions and chains located at "Disneyland" in
28 Anaheim, California. Defendants have not provided clear and reasonable warnings of the

1 exposure within the meaning of Health & Safety Code Sections 25249.6 and 25249.11.

2 16. At all times relevant to this action, Defendants knew that the brass stanchions and
3 chains located at “Disneyland” were causing exposures to lead and lead compounds. Defendants
4 intended that residents of California handle or touch the brass stanchions and chains used for line
5 control at “Disneyland” in a manner that would lead to significant exposures to these chemicals.

6 17. By the above described acts, Defendants have violated Cal. Health & Safety Code
7 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
8 65, to provide warnings to all present and future park visitors regarding the exposures to lead
9 caused by the stanchions and chains at “Disneyland”.

10 SECOND CAUSE OF ACTION
11 (Claim for Civil Penalties)

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

14 19. By the above described acts, Defendants are liable and should be liable pursuant
15 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each
16 individual exposed without proper warning to lead and lead compounds from handling or
17 touching the stanchions and chains used for crowd/line control at “Disneyland”.

18 PRAYER FOR RELIEF

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

20 1. Pursuant to the First Cause of Action, that Defendants be enjoined, restrained,
21 and ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
22 Code;

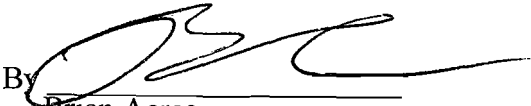
23 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil
24 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
25 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
26 Defendants’ use of brass stanchions and chains for crowd/line control at “Disneyland”;

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

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

2 Dated: April 7, 2011

3 KLAMATH ENVIRONMENTAL LAW CENTER

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5 By _____
6 Brian Acree
7 Attorney for Plaintiff
8 Mateel Environmental Justice Foundation
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SEF



Klamath

MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
A 501(C)(3) NON-PROFIT CORPORATION

December 30, 2010

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 Disney companies identified on the attached service list (collectively hereinafter "Disney") 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 at Disneyland in Anaheim, California and are caused by the brass stanchions and attached chains used in crowd/line control at those rides/exhibits/spectacles within Disneyland that are listed on the attached sheet. The exact address and location of Disneyland is also provided on that same attached sheet. Patrons of Disneyland are exposed to lead when they touch the above-referenced brass stanchions and chains while gathered near or while waiting in line at the rides/exhibits/locations described in the attached sheet. The consumer service that causes the exposure is providing the rides/exhibits/spectacles that are listed in the attached sheet. The brass alloy used to make these stanchions and chains contains lead. When people touch these brass stanchions and chains, lead from the brass alloy comes off on their hands and is then absorbed through the skin, enters the body through cuts and abrasions, is ingested orally by being transferred from hands to food which is then eaten, or by hand-to-mouth (or other mucous membranes) behavior such as nail biting, or lead is transferred from hands to cigarettes and then inhaled when the cigarette is smoked. These lead exposures thus occur via the dermal absorption, subcutaneous, mucus membrane, ingestion and inhalation routes. Disney 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 December 30, 2007, and will continue every day until the lead is removed from the alloys used to make stanchions and chains or until Disney provides its patrons with Proposition 65-compliant warnings. The above-referenced violations are alleged for occupational exposures as well as for consumer service exposures. The actions that Disney employees take that expose them to lead are the same as the actions taken by Disney patrons—they touch the brass alloy from which the brass stanchions and chains are made. This Notice of Violation pertains only to Proposition 65 violations that occur in the County of Orange.

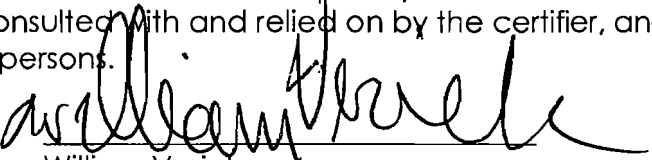
Cordially,

William Verick

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: December 30, 2010


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:

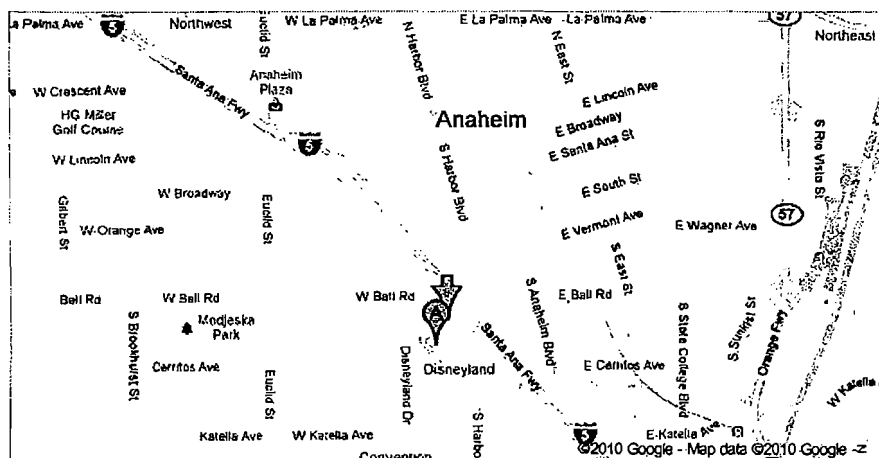
If called, I could and would testify as follows: I am over eighteen. My business address is 424 First Street, Eureka, California, 95501. On December 30, 2010, I caused the attached 60-DAY NOTICE LETTER, or a letter identical in substance, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by U.S. Mail I caused the attached 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 December 30, 2010, at Eureka, California.



Nicole Frank

Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map.



A. Disneyland

1313 South Harbor Boulevard, Anaheim, CA -
(714) 520-6076 - 0.2 mi SW
490 reviews

[Report a problem](#)

BRASS STANCHIONS, BRASS RAILINGS AND BRASS CHAINS LOCATED AT THE FOLLOWING DISNEYLAND LOCATIONS:

- PETER PAN'S FLIGHT**
- HAUNTED MANSION**
- MR. TOAD'S WILD RIDE**
- BLUE RIBBON BAKERY**