

ENDORSED  
FILED  
San Francisco County Superior Court

JUL 22 2015

CLERK OF THE COURT

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MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO  
13 (Unlimited Jurisdiction)

14 MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION,

15 Plaintiff,

16 v.

18 24 HOUR FITNESS USA, INC., and  
19 EQUINOX HOLDINGS, INC.

20 Defendants.

CASE NO. CGC-15-546994

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

TOXIC TORT/ENVIRONMENTAL

21 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION alleges as follows:

22 INTRODUCTION

23 1. This Complaint seeks civil penalties and an injunction to remedy the continuing  
24 failure of defendants 24 HOUR FITNESS USA, INC., and EQUINOX HOLDINGS, INC.  
25 (hereinafter "Defendants"), to give clear and reasonable warnings to those residents of California,  
26 who swim laps in swimming pools defendants operate at health clubs throughout California, and  
27 who use the hot tubs at those health clubs. Defendants use chlorine products to disinfect the  
28 water in their swimming pools and hot tubs. This chlorine reacts with organic material in the



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 exposed to chloroform and bromodichloromethane when exercising or relaxing in  
4 the swimming pools and hot tubs present at the California-located health clubs that defendants  
5 own and operate.

6 6. Defendants are persons doing business within the meaning of Health & Safety  
7 Code Section 25249.11. Defendants are businesses that own, operate, and promote health clubs  
8 in California, including health clubs that are located in San Francisco County. Exposures at issue  
9 in this case occur in San Francisco County.

10 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &  
11 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a  
12 Notice of Violation letter, dated August 14, 2014, which Mateel sent to California's Attorney  
13 General. A substantively identical letter was sent to the District Attorney of San Francisco  
14 County as well as to district attorneys for each of California's 58 counties and to the city  
15 attorneys for every California city with a population greater than 750,000. Attached to the Notice  
16 of Violation Letter sent to each defendant was a summary of Proposition 65 that was prepared by  
17 California's Office of Environmental Health Hazard Assessment. In addition, each Notice of  
18 Violation Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service  
19 of the Notice of Violation Letter on each entity that received it. Pursuant to California Health &  
20 Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious  
21 basis for the action was also sent with each Notice of Violation Letter. Factual information  
22 sufficient to establish the basis of the Certificate of Merit was enclosed with the Notice of  
23 Violation letter Mateel sent to the Attorney General.

24 8. Each defendant employs more than ten people.

#### 25 JURISDICTION

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

1 of the Health & Safety Code, which contains the statutes under which this action is brought, does  
2 not grant jurisdiction to any other trial court.

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

10 11. Venue is proper in this Court because the location where exposures to chloroform  
11 and bromodichloromethane have occurred due to patrons use of defendants' swimming pools and  
12 hot tubs that are located in San Francisco County. Liability for Plaintiff's causes of action, or  
13 some parts thereof, has accordingly arisen in San Francisco County during the times relevant to  
14 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 developmental toxicity must first provide a clear and  
25 reasonable warning to such individual prior to the exposure.

26 15. Since at least three years prior to the Notice of Violation Letters, Defendants have  
27 engaged in conduct that violates Health and Safety Code Section 25249.6 et seq. This conduct  
28 includes knowingly and intentionally exposing to the above mentioned toxic chemicals, those

1 California residents who exercise or relax in swimming pools and hot tubs at health club  
2 locations defendants operate in California. Defendants have not provided clear and reasonable  
3 warnings of the exposure within the meaning of Health & Safety Code Sections 25249.6 and  
4 25249.11.

5 16. At all times relevant to this action, Defendants knew that the swimming pools and  
6 hot tubs in their California health clubs were causing exposures to chloroform and  
7 bromodichloromethane. Defendants intended that residents of California exercise in, or relax in,  
8 the swimming pools and hot tubs at defendants' California health club locations. Defendants  
9 intended that patrons at their California health clubs use the swimming pools and hot tubs there  
10 in ways that lead to significant exposures to these chemicals.

11 17. By the above described acts, Defendants have violated Cal. Health & Safety Code  
12 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition  
13 65, to provide warnings to all present and future patrons who exercise or relax in defendants'  
14 swimming pools and hot tubs.

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

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

19 19. By the above described acts, Defendants are liable and should be liable pursuant  
20 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each  
21 individual exposed without proper warning to chloroform and bromodichloromethane from  
22 exercising or relaxing in the swimming pools and hot tubs at the health clubs that defendants  
23 operate in California.

24 PRAYER FOR RELIEF

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

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


1           2.       Pursuant to the Second Cause of Action, that Defendants be assessed a civil  
2 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section  
3 25249.6 of the California Health & Safety Code, to chloroform and bromodichloromethane as the  
4 result of defendants' use of chlorine compounds to disinfect the water in the swimming pools and  
5 hot tubs they operate at their California-located health clubs;

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

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

9  
10 Dated: July 22, 2015

KLAMATH ENVIRONMENTAL LAW CENTER

11  
12 By   
13 David Williams  
14 Attorney for Plaintiff  
15 Mateel Environmental Justice Foundation  
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