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8 Attorneys for Plaintiff,
9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

MAR 08 2018

CLERK OF THE COURT
BY: KALENE APOLONIO
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY SAN FRANCISCO
12 (Unlimited Jurisdiction)

13 MATEEL ENVIRONMENTAL
14 JUSTICE FOUNDATION,

CASE NO.

CGC-18-564892

15 Plaintiff,

16 v.

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

17 NOWHERE PARTNERS CORP and TYP
18 RESTAURANT GROUP, INC.,

TOXIC TORT/ENVIRONMENTAL

19 Defendants.
20 _____/

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 NOWHERE PARTNERS CORP and TYG RESTAURANT GROUP
25 (hereinafter "Defendants"), to give clear and reasonable warnings to those residents of California,
26 who drink kombucha that defendants dispense at retail outlets they operate in California.
27 Kombucha is a fermented tea drink that is dispensed through taps at the retail outlets defendants
28 operate. The equipment defendants use to dispense the kombucha they sell imparts lead to the

1 kombucha. When people drink the kombucha, they drink lead. This causes an exposure to lead
2 within the meaning of Health and Safety Code Section 25249.6.

3 2. Defendants sell kombucha throughout California, including in San Francisco.
4 Defendants' equipment imparts lead to the kombucha they sell and defendants intend that people
5 who purchase kombucha drink the lead-infused kombucha. This causes exposure to lead, a
6 chemical listed pursuant to 27 Cal. Code Regs. § 27001 as known to cause male and female
7 reproductive toxicity, as well as developmental toxicity.

8 3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7
9 to compel Defendants to bring their business practices into compliance with section 25249.5 et
10 seq. by providing a clear and reasonable warning to each individual who has been and who in the
11 future may be exposed to lead by drinking defendants' kombucha.

12 4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure
13 of Defendants to provide clear and reasonable warnings regarding exposure to a chemical known
14 to cause male and female reproductive toxicity, as well as developmental toxicity.

15 PARTIES

16 5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel")
17 is a non-profit organization dedicated to, among other causes, the protection of the environment,
18 promotion of human health, environmental education, and consumer rights. Mateel is based in
19 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
20 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
21 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
22 California are exposed to lead when they drink lead-infused kombucha that defendants dispense
23 at retail outlets they operate in California.

24 6. Defendants are persons doing business within the meaning of Health & Safety
25 Code Section 25249.11. Defendants are businesses that sell lead-infused kombucha in California,
26 including in San Francisco County. Exposures at issue in this case occur in San Francisco
27 County.

28 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &

1 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of the
2 Notice of Violation letter, dated December 7, 2017, which Mateel sent to California's Attorney
3 General. A substantively identical letter was sent to the District Attorney of San Francisco
4 County as well as to district attorneys for each of California's 58 counties and to the city
5 attorneys for every California city with a population greater than 750,000. Attached to the Notice
6 of Violation Letter sent to each defendant was a summary of Proposition 65 that was prepared by
7 California's Office of Environmental Health Hazard Assessment. In addition, each Notice of
8 Violation Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service
9 of the Notice of Violation Letter on each entity that received it. Pursuant to California Health &
10 Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious
11 basis for the action was also sent with each Notice of Violation Letter. Factual information
12 sufficient to establish the basis of the Certificate of Merit was enclosed with the Notice of
13 Violation letter Mateel sent to the Attorney General.

14 8. Each defendant employs more than ten people.

15 JURISDICTION

16 9. The Court has jurisdiction over this action pursuant to California Health & Safety
17 Code Section 25249.7. California Constitution Article VI, Section 10 grants the Superior Court
18 "original jurisdiction in all causes except those given by statute to other trial courts." Chapter 6.6
19 of the Health & Safety Code, which contains the statutes under which this action is brought, does
20 not grant jurisdiction to any other trial court.

21 10. This Court also has jurisdiction over Defendants because they are businesses that
22 have sufficient minimum contacts in California and within San Francisco County. Defendants
23 intentionally availed themselves of the legal protections offered by California and by San
24 Francisco County by marketing their kombucha for consumption in San Francisco, California. It
25 is thus consistent with traditional notions of fair play and substantial justice for the San Francisco
26 Superior Court to exercise jurisdiction over Defendants.

27 11. Venue is proper in this Court because exposures to lead caused by defendants'
28 kombucha occur in San Francisco. Liability for Plaintiff's causes of action, or some parts

1 thereof, has accordingly arisen in San Francisco during the times relevant to this Complaint and
2 Plaintiff seeks civil penalties imposed by statute.

3 FIRST CAUSE OF ACTION
4 (Claim for Injunctive Relief)

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

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

10 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
11 that businesses that knowingly and intentionally expose any individual to a chemical known to
12 the State of California to cause cancer or developmental toxicity must first provide a clear and
13 reasonable warning to such individual prior to the exposure.

14 15. Since at least three years prior to the Notice of Violation Letter, defendants have
15 engaged in conduct that violates Health and Safety Code Section 25249.6 et seq. This conduct
16 includes knowingly and intentionally exposing to lead, those California residents who drink lead-
17 infused kombucha that defendants serve in retail outlets in California. Defendants have not
18 provided clear and reasonable warnings of the exposure within the meaning of Health & Safety
19 Code Sections 25249.6 and 25249.11.

20 16. At all times relevant to this action, Defendants knew that their kombucha was
21 causing exposures to lead. Prior to being served with the above-referenced Notice of Violation,
22 each defendant was sent, and received, letters informing them that people who drink the
23 kombucha they serve are exposed to "the toxic heavy metal, lead." Defendants thus knew that
24 their kombucha contained lead and, in possession of that knowledge, defendants intended that
25 residents of California drink their lead-infused kombucha.

26 17. By the above described acts, Defendants have violated Cal. Health & Safety Code
27 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition
28 65, to provide warnings to all present and future customers who buy the kombucha defendants

1 dispense at the retail outlets they operate in California.

2
3 SECOND CAUSE OF ACTION
(Claim for Civil Penalties)

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

6 19. By the above described acts, Defendants are liable and should be liable pursuant
7 to Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500 per day for each individual
8 exposed without proper warning to lead when these individuals drank defendants' lead-infused
9 kombucha in California.

10 PRAYER FOR RELIEF

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

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

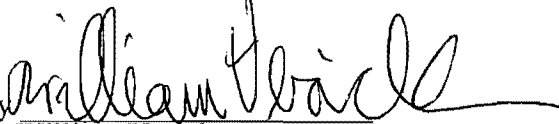
15 2. Pursuant to the Second Cause of Action, that Defendants be assessed a civil
16 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
17 25249.6 of the California Health & Safety Code, to lead when they drank defendants' lead-
18 infused kombucha;

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

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

22 Dated: March 8, 2018

KLAMATH ENVIRONMENTAL LAW CENTER

23
24 By 

25 William Verick
26 Attorney for Plaintiff
Mateel Environmental Justice Foundation



December 7, 2017

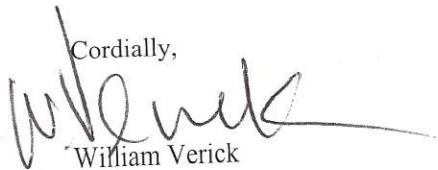
PROPOSITION 65 ENFORCEMENT REPORTING
ATTENTION: PROP 65 COORDINATOR
1515 CLAY STREET, SUITE 2000
P.O. BOX 70550
OAKLAND CA 94612-0550

ATTORNEY GENERAL COPY
CONTAINS OFFICIAL
INFORMATION PURSUANT TO
EVIDENCE CODE §1040

Greetings:

This office and the Mateel Environmental Justice Foundation ("Mateel") give you notice that the private businesses listed on the accompanying service list ("businesses") have been, are, 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 when California residents ingest or otherwise come into contact with kombucha served on tap at locations operated by the businesses or to whom the businesses have sold kombucha. This kombucha is contaminated with lead, a chemical known to cause birth defects and other reproductive harm. When people ingest kombucha, they also ingest (and are therefore exposed to) lead. When people come into contact in other ways with kombucha -- such as when touching it -- some of the lead dissolved in the kombucha is absorbed through the skin, and enters through cuts and abrasions in the skin. The routes of exposure to lead from kombucha, therefore, are via ingestion, dermal absorption, subcutaneous, and mucous membrane routes of exposure. The businesses did not and do not provide people with clear and reasonable warnings before they expose California residents to lead in kombucha. These violations have occurred every day since at least October 25, 2014, and will continue every day until the lead is removed from the kombucha, or until clear and reasonable warnings are given.

Cordially,

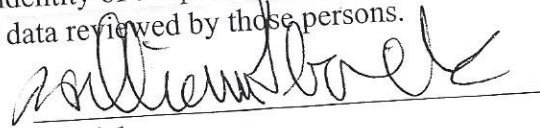


William Verick

CERTIFICATE OF MERIT

I, William Verick, hereby declare: This Certificate of Merit accompanies the attached notice(s) of violation 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 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.

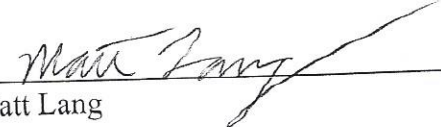
Dated: December 7, 2017


William Verick

CERTIFICATE OF SERVICE

I, Matt Lang, declare:

If called, I could and would testify as follows: I am over eighteen. My business address is 1125 Sixteenth Street, Suite 204, Arcata, California, 95521. On December 7, 2017, 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 December 7, 2017, at Arcata, California.


Matt Lang

SERVICE LIST

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

OAKLAND CITY ATTORNEY
CITY HALL 6TH FLOOR
1 FRANK OGAWA PLAZA
OAKLAND, CA 94612

OFFICE OF THE CITY ATTORNEY
CITY OF SAN FRANCISCO
CITY HALL, ROOM 234
1 DR. CARLTON B. GOODLETT PLACE
SAN FRANCISCO, CA 94102-4682

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 CONTRA COSTA
P.O. BOX 670
MARTINEZ, CA 94553

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

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF LOS ANGELES
HALL OF JUSTICE
211 W TEMPLE STREET STE 1200
LOS ANGELES, CA 90012

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

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 LUIS OBISPO
COUNTY GOVERNMENT CENTER #450
SAN LUIS OBISPO, CA 93408

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 VENTURA
800 SOUTH VICTORIA AVE
VENTURA, CA 93009

LASSENS NATURAL FOODS AND VITAMINS, INC.
PETER LASSEN, CEO
4071 E. MAIN STREET
VENTURA, CA 93003

TENDER GREENS
ERIC OBERHOLTZEN, CEO
TYP RESTAURANT GROUP, INC.
2633 FAIRFAX AVE.
CULVER CITY, CA 90232

EREWHON MARKETS
MARIONO ANTHONY ANTOCI, CEO
NOWHERE PARTNERS CORP.
7660-A BEVERLY BLVD.
LOS ANGELES, CA 90036