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9 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
(Unlimited Jurisdiction)

13 MATEEL ENVIRONMENTAL  
14 JUSTICE FOUNDATION,

CASE NO.

**CGC-21-592209**

15 Plaintiff,

16 v.

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

17 FISKARS LIVING US, LLC; FISKARS  
18 BRANDS, INC. and FISKARS OY AB,

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 FISKARS LIVING US, LLC; FISKARS BRANDS, INC. and FISKARS  
25 OY AB. (hereinafter "Fiskars" or "Defendants") to give clear and reasonable warnings to those  
26 residents of California, who purchase leaded crystal from defendants and use that leaded crystal  
27 to store and serve beverages that defendants' customers drink and/or eat, that drinking and eating  
28 beverages from defendants' leaded crystal products causes defendants' customers to be exposed

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**05/27/2021**  
Clerk of the Court  
BY: KALENE APOLONIO  
Deputy Clerk

1 to lead, a chemical known to the State of California to cause cancer and reproductive toxicity.  
2 When beverages, such as wine, whiskey, cola and fruit juices are stored in, or served from,  
3 defendants' crystal products, lead leaches out of the crystal and into the beverage. This lead is  
4 then ingested by defendants' customers and their friends and family members. Fiskars has  
5 violated Cal. Health & Saf. Code § 25249.6 by failing to give a clear and reasonable warning to  
6 their customers who buy defendants' leaded crystal, that drinking beverages stored in, or served  
7 from, the leaded crystal will expose them to lead, a chemical known by the State to cause cancer  
8 and birth defects.

9         2. Fiskars sells leaded crystal vessels, such as goblets, decanters, wine glasses,  
10 champaign flutes, and high ball glasses to various retailers who maintain stores in California, in  
11 particular, the TJX Companies, which operates retail businesses under the names, TJ Maxx,  
12 Marshalls and Homegoods. Fiskars deliberately targets the California market for leaded crystal  
13 drinking vessels through its sales of leaded crystal to the California retailers, including the TJX  
14 Companies. Fiskars intends that residents of California drink beverages contaminated with lead  
15 as a result of having been stored in, or served from, defendants' leaded crystal that has been  
16 marketed in California. In spite of knowing that residents of California were and are being  
17 exposed to this toxic heavy metal when they drink beverages from defendants' leaded crystal,  
18 defendants did not and do not provide clear and reasonable warnings that leaded crystal  
19 defendants' market in California causes exposure to chemicals known to cause cancer, birth  
20 defects and other reproductive harm.

21         3. Plaintiff seeks injunctive relief pursuant to Health & Safety Code Section 25249.7  
22 to compel defendants to bring their business practices into compliance with section 25249.5 et  
23 seq. by providing a clear and reasonable warning to each individual who has been and who in the  
24 future may be exposed to lead by drinking beverages from leaded crystal that defendants have  
25 marketed in California.

26         4. In addition to injunctive relief, plaintiff seeks civil penalties to remedy the failure  
27 of Fiskars to provide clear and reasonable warnings regarding exposure to a chemical known to  
28 cause cancer, birth defects and other reproductive harm.

PARTIES

5. Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION ("Mateel") is a non-profit organization dedicated to, among other causes, the protection of the environment, promotion of human health, environmental education, and consumer rights. Mateel is based in Arcata, California, and is incorporated under the laws of the State of California. Mateel is a "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d) because residents of California are regularly exposed to lead and lead compounds from the leaded crystal drinking vessels that Fiskars sells, and are so exposed without a clear and reasonable Proposition 65 warning.

6. Defendants are persons doing business within the meaning of Health & Safety Code Section 25249.11. Fiskars are businesses that target and avail themselves of the California market for leaded crystal drinking vessels, including in San Francisco. Sale of defendants' leaded crystal in the county of San Francisco causes residents of the county to be exposed to lead and lead compounds while they are physically present in San Francisco.

7. Plaintiff brings this enforcement action against Defendant pursuant to Health & Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a 60-day Notice of Violation ("Notice"), dated February 18, 2021, which Mateel sent to California's Attorney General. Substantively identical letters were sent to District Attorneys for each of California's 58 counties, and to the City Attorneys for the cities of Los Angeles, San Francisco, Sacramento, San Jose and San Diego. Attached to the Notice sent to each Fiskars entity was a summary of Proposition 65 that was prepared by California's Office of Environmental Health Hazard Assessment. In addition, each 60-Day Notice Letter plaintiff sent was accompanied by a Certificate of Service attesting to the service of the 60-Day Notice Letter on each entity which received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of Merit attesting to the reasonable and meritorious basis for the action was also sent with each 60-Day Notice Letter. Factual information sufficient to establish the basis of the Certificate of Merit was enclosed with the 60-Day Notice letter Mateel sent to the

1 Attorney General.

2 8. Each defendant employs more than ten people.

3 9. Defendants have not notified Mateel that they have corrected the Proposition 65  
4 violations alleged in the above-referenced Notice of Violation.

5 JURISDICTION

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

11 11. This Court also has jurisdiction over the Fiskars entities because they are  
12 businesses that have sufficient minimum contacts in California and within the City and County of  
13 San Francisco. Defendants intentionally availed themselves of the California and San Francisco  
14 County markets for leaded crystal drinking vessels. It is thus consistent with traditional notions  
15 of fair play and substantial justice for the San Francisco Superior Court to exercise jurisdiction  
16 over defendants.

17 12. Venue is proper in this court because Defendants market their leaded crystal to  
18 retailers who sell it in and around Sacramento and thus cause people to be exposed to lead and  
19 lead compounds while those people are physically present in Sacramento. Liability for plaintiff's  
20 causes of action, or some parts thereof, has accordingly arisen in Sacramento during the times  
21 relevant to this Complaint and plaintiff seeks civil penalties imposed by statute.

22 FIRST CAUSE OF ACTION  
23 (Claim for Injunctive Relief)

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

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

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

5           16.     Since at least February 18, 2018, defendants have engaged in conduct that violates  
6 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and  
7 intentionally exposing to lead, those California residents who drink beverages served from leaded  
8 crystals that defendants market in California. Drinking beverages served from defendants'  
9 leaded crystal is a normally intended use of defendants' leaded crystal. Defendants have not  
10 provided clear and reasonable warnings, within the meaning of Health & Safety Code Sections  
11 25249.6 and 25249.11.

12           17.     At all times relevant to this action, defendants knew that the leaded crystal they  
13 sold caused exposure to lead. Defendants intended that residents of California drink lead-  
14 contaminated beverage served from defendants' leaded crystal so as to cause exposure to this  
15 toxic heavy metal.

16           18.     By the above described acts, defendants violated Cal. Health & Safety Code  
17 § 25249.6 and are therefore subject to an injunction ordering them to stop violating Proposition  
18 65, to provide warnings to all present and future who purchase (or who have purchased)  
19 defendants' leaded crystal without receiving a clear and reasonable warning.

20                               SECOND CAUSE OF ACTION  
21                               (Claim for Civil Penalties)

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

24           20.     By the above described acts, defendants are liable and should be liable pursuant to  
25 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual  
26 exposed without proper warning, since February 18, 2018, to lead as a result of drinking  
27 beverages served from defendants' leaded crystal drinking vessels.

28                               PRAYER FOR RELIEF

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

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

5 2. Pursuant to the Second Cause of Action, that defendants be assessed a civil  
6 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section  
7 25249.6 of the California Health & Safety Code, to lead as the result of drinking leaded crystal  
8 that defendants marketed to them;

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

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

12 Dated: May 25, 2021

KLAMATH ENVIRONMENTAL LAW  
CENTER

14 By   
15

William Verick  
Attorney for Plaintiff  
Mateel Environmental Justice Foundation