

SUMMONS ISSUED

FILED
San Francisco County Superior Court

JUL 29 2009

GORDON PARK-LI, Clerk

BY: Elise Bitt
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET

DEC 31 2009 - 9⁰⁰AM

DEPARTMENT 212

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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-09-490903**

17 Plaintiff,

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

18 v.

19 ORS NASCO, INC.

20 Defendant.

21 / TOXIC TORT/ENVIRONMENTAL

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 ORS NASCO, INC., to give clear and reasonable warnings to those residents
26 of California, who handle and use products that are made of, or incorporate parts made of, brass
27 and/or bronze (hereinafter referred to as "brass products"), that handling and use of these
28 products causes those residents to be exposed to lead and lead compounds, lead acetate, lead

1 is a non-profit organization dedicated to, among other causes, the protection of the environment,
2 promotion of human health, environmental education, and consumer rights. Mateel is based in
3 Eureka, California, and is incorporated under the laws of the State of California. Mateel is a
4 "person" pursuant to Health & Safety Code Section 25118. Mateel brings this enforcement
5 action in the public interest pursuant to Health & Safety Code §25249.7(d). Residents of
6 California are regularly exposed to lead and lead compounds from Leaded Brass Products
7 manufactured, distributed or marketed by Defendant and are so exposed without a clear and
8 reasonable Proposition 65 warning.

9 6. Defendant is a person doing business within the meaning of Health & Safety
10 Code Section 25249.11. Defendant is a business that manufactures, distributes, and/or markets
11 Brass Products in California, including the City and County of San Francisco. Manufacture,
12 distribution and/or marketing of these products in the City and County of San Francisco and/or
13 to people who live in San Francisco, causes people to be exposed to lead and lead compounds
14 while they are physically present in the City and County of San Francisco.

15 7. Plaintiff brings this enforcement action against Defendants pursuant to Health &
16 Safety Code Section 25249.7(d). Attached hereto and incorporated by reference is a copy of a
17 60-day Notice letter, dated July 17, 2008 which Mateel sent to California's Attorney General.
18 Substantially identical letters were sent to every District Attorney in the state, and to the City
19 Attorneys of every California city with a population greater than 750,000. On the same date,
20 Mateel sent to Defendant a letter substantively identical to the Notice letter it sent on that date to
21 the Attorney General. Attached to the 60-Day Notice Letter sent to Defendant was a summary of
22 Proposition 65 that was prepared by California's Office of Environmental Health Hazard
23 Assessment. In addition, the 60-Day Notice Letter plaintiff sent was accompanied by a
24 Certificate of Service attesting to the service of the 60-Day Notice Letter on each entity which
25 received it. Pursuant to California Health & Safety Code Section 25249.7(d), a Certificate of
26 Merit attesting to the reasonable and meritorious basis for the action was also sent with each 60-
27 Day Notice Letter. Factual information sufficient to establish the basis of the Certificate of Merit
28 was enclosed with the 60-Day Notice letter Mateel sent to the Attorney General.

1 8. Defendant is a business that employs more than ten people.

2 JURISDICTION

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

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

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

18 FIRST CAUSE OF ACTION
19 (Claim for Injunctive Relief)

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

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

25 14. To effectuate this goal, Section 25249.6 of the Health and Safety Code mandates
26 that persons who, in the course of doing business, knowingly and intentionally expose any
27 individual to a chemical known to the State of California to cause cancer or birth defects must
28 first provide a clear and reasonable warning to such individual prior to the exposure.

1 15. Since at least July 17, 2005 Defendant has engaged in conduct that violates
2 Health and Safety Code Section 25249.6 et seq. This conduct includes knowingly and
3 intentionally exposing to the above mentioned toxic chemicals, those California residents who
4 handle and use Brass Products. The normally intended use of Brass Products causes exposure to
5 lead and lead compounds, which are chemicals known to the State of California to cause cancer,
6 birth defects and other reproductive harm. Defendant has not provided clear and reasonable
7 warnings, within the meaning of Health & Safety Code Sections 25249.6 and 25249.11.

8 16. At all times relevant to this action, Defendant knew that the Brass Products they
9 manufactured, distributed or marketed were causing exposures to lead and lead compounds.
10 Defendant intended that residents of California handle and use Brass Products in such ways as
11 would lead to significant exposures to these chemicals.

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

17 SECOND CAUSE OF ACTION
18 (Claim for Civil Penalties)

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

21 19. By the above described acts, Defendant is liable and should be liable pursuant to
22 Health & Safety Code § 25249.7(b), for a civil penalty of \$2,500.00 per day for each individual
23 exposed without proper warning to lead and lead compounds from the handling or use of
24 Defendant's Brass Products.

25 PRAYER FOR RELIEF

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

27 A. Pursuant to the First Cause of Action, that Defendant be enjoined, restrained, and
28

1 ordered to comply with the provisions of Section 25249.6 of the California Health & Safety
2 Code;

3 B. Pursuant to the Second Cause of Action, that Defendant be assessed a civil
4 penalty in an amount equal to \$2,500.00 per day per individual exposed, in violation of Section
5 25249.6 of the California Health & Safety Code, to lead and lead compounds as the result of
6 Defendant's manufacturing, distributing or marketing of Brass Products;

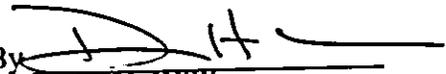
7 C. That Defendant be ordered to identify and locate each individual who purchased
8 Brass Products and provide a warning to each such person that the Brass Products the person
9 purchased will expose that person to chemicals known to cause birth defects.

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

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

13 Dated: July 29, 2009

LAW OFFICES OF DAVID H. WILLIAMS

14
15
16 By 
17 David H. Williams
18 Attorney for Plaintiff
19 Mateel Environmental Justice Foundation
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Klamath

ENVIRONMENTAL
LAW CENTER

July 17, 2008

EDWARD G. WEIL
DEPUTY ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
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 at both Mateel and this office. The above referenced violations occur when California residents come into contact with brass components of equipment used in connection with torches and welding equipment. These components include brass valves, nozzles, brass quick connects, brass couplers and brass regulators (collectively hereinafter "brass components"). The listed businesses market these products. A list of specific examples of the specific types of products at issue is attached. Though specific model and UPC numbers are given as examples, this notice pertains to all similar types of brass components. The brass components that people handle are made from leaded brass, which contains lead and lead compounds ("lead"), which are chemicals known to cause cancer, birth defects and other reproductive harm. California residents are exposed to lead when they handle these brass components. Lead is transferred from the brass components to peoples' hands and to other parts of their skin. This lead is then absorbed through the skin, taken into cuts and abrasions, absorbed through mucous membranes, and transferred from the skin to the mouth via oral contact either directly with the lead-contaminated skin, and when lead is transferred from contaminated skin to cigarettes and food and the contaminated cigarettes and food are smoked and/or eaten. These lead exposures thus occur via the dermal absorption, subcutaneous, mucous membrane, ingestion and inhalation routes. The listed companies did not and do not provide people with clear and reasonable warnings before they expose them to lead. These violations have occurred every day since at least July 17, 2005, and will continue every day until the lead is removed from the brass components, or until clear and reasonable warnings are given. The above-referenced 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 brass components made outside of California, except as to workplaces the companies themselves maintain in California. Exposures constituting Proposition 65 environmental exposure violations occur both on and off the companies private business properties and in each of California's 58 counties.

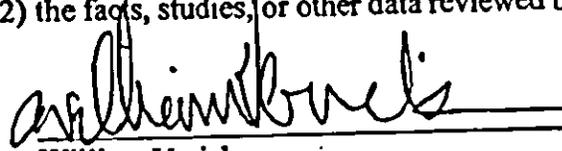
Cordially,

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: July 17, 2008

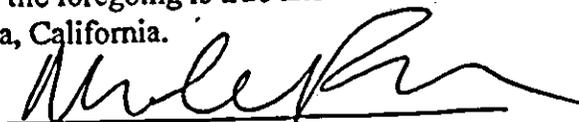

William Verick

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 July 17, 2008, 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 60-DAY NOTICE LETTER 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 July 17, 2008, at Eureka, California.


Nicole Frank

PRODUCTS LIST

THE ESAB GROUP, INC.

PREST-O-LITE AIR-GAS SOFT FLAME KIT P/N 639297 UPC CODE: 662067 012824 This product description pertains not only to the specific model of the product listed, but also for all units of all models of valves (including the valve handles) regulators, connector hoses with brass fittings, and other brass fittings that are associated with the use of flammable compressed gasses.

GOSS, INC.

ACETYLENE REGULATOR WITH GAUGE B EA-1G, CGA250, A HOSE

UPC CODE: 662999 018147; AI- PROPANE TIP BP-2 TIP, AIR-LP UPC CODE: 662999 016297

These product descriptions pertain not only to the specific models of the products listed, but also for all units of all models of valves (including the valve handles) regulators, connector hoses with brass fittings, and other brass fittings that are associated with the use of flammable compressed gasses.

O.K.I. SUPPLY CO.

OKI BERING

BEST WELDS TWIN WELDING HOSE 1/4" X 25' B&B FITTING PART NO. RH-2102 STOCK NO. EOC1425 UPC CODE: 606230 007866 This product description pertains not only to the specific model of the product listed, but also for all units of all models of valves (including the valve handles) regulators, connector hoses with brass fittings, and other brass fittings that are associated with the use of flammable compressed gasses.

ORS NASCO CO.

ANCHOR BRAND TWIN WELDING HOSE FOR ACETYLENE GAS GRADE R, 3/15" X 50' B-B FITTINGS PART # LB503 UPC CODE: 604669 168172 This product description pertains not only to the specific model of the product listed, but also for all units of all models of valves (including the valve handles) regulators, connector hoses with brass fittings, and other brass fittings that are associated with the use of flammable compressed gasses.

SERVICE LIST

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CITY HALL ROOM 206
400 VAN NESS
SAN FRANCISCO, CA 94102

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CITY OF SACRAMENTO
PO BOX 1948
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25 COUNTY CENTER DR.
OROVILLE, CA 95963

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