



1 WILLIAM VERICK, SBN 140972
 2 Klamath Environmental Law Center
 3 424 First Street
 4 Eureka, CA 95501
 Telephone: (707) 268-8900
 Facsimile: (707) 268-8901
 E-mail: wverick@igc.org;

5 DAVID WILLIAMS, SBN 144479
 6 1990 North California Blvd., 8th Floor
 7 Walnut Creek, CA 94596
 Telephone: (510) 847-2356
 E-mail: dhwill7@gmail.com

8 LEXINGTON LAW GROUP
 Eric Somers SBN 139050
 9 Howard Hirsch SBN 213209
 10 503 Divisadero Street
 San Francisco, CA 94117
 Telephone: (415) 913-7800
 11 esomers@lexlawgroup.com
 hhirsch@lexlawgroup.com

12 Attorneys for Plaintiff,
 13 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF ALAMEDA

RG15754547

16 MATEEL ENVIRONMENTAL
 17 JUSTICE FOUNDATION,

CASE NO.

18 Plaintiff and Petitioner,

VERIFIED PETITION FOR WRIT OF
 MANDATE AND COMPLAINT FOR
 DECLARATORY RELIEF AND
 INJUNCTION

19 v.

20 CALIFORNIA OFFICE OF
 ENVIRONMENTAL HEALTH HAZARD
 21 ASSESSMENT; DR. GEORGE ALEXEEF,
 in his official capacity as Director of the
 22 California Office of Environmental Health
 Hazard Assessment; and DOES 1-10,

[Code of Civil Procedure §§ 525, 1060, 1085,
et seq.; Government Code § 11350(a)]

23 Defendants and Respondents.
 24

25 _____/

1 **INTRODUCTION**

2 1. This Complaint seeks a writ of mandate and declaratory and other relief to compel
3 the California Office of Environmental Health Hazard Assessment to repeal Proposition 65's
4 implementing regulation, Cal. Code Regs., tit. 27, § 25805(b), to the extent that regulation
5 pertains to the element lead as a reproductive toxin. Specifically, Plaintiff/Petitioner Mateel
6 Environmental Justice Foundation seeks to invalidate the regulatory safe harbor level for lead of
7 0.5 microgram per day ("ug/day"). This safe harbor level was established in 1992 based on data
8 that was already 14 years old at that time – data which did not even support the safe harbor level
9 then. In the meantime, studies have repeatedly concluded that there is no threshold exposure
10 level below which the neurodevelopmental toxicity of lead cannot be seen to occur. By
11 promulgating, implementing, maintaining and enforcing a safe harbor level for lead that is based
12 on data from 1978 and that did not meet or even attempt to meet the statutory requirements for
13 setting a safe harbor level, Defendants and Respondents are undermining Proposition 65's goal
14 of protecting California residents from unwarned exposures to reproductive toxins.

15 **PARTIES**

16 2. Plaintiff/Petitioner MATEEL ENVIRONMENTAL JUSTICE FOUNDATION
17 ("Mateel") is a non-profit tax-exempt corporation dedicated to, among other causes, the
18 protection of the environment, promotion of human health, environmental education, and
19 consumer rights. Mateel is based in Eureka, California, and is incorporated under the laws of the
20 State of California. The central focus of Mateel's program work is to reduce exposures to toxic
21 chemicals by acting as a citizen enforcer of Proposition 65, California's right-to-know law.
22 Mateel frequently brings Proposition 65 enforcement actions that are based on unwarned
23 exposures to lead. In its citizen-enforcement litigation, Mateel's goal is to convince defendants
24 to reformulate their products to eliminate or reduce the lead content of those products to levels
25 that do not require a warning under Proposition 65. Using this strategy, Mateel has dramatically
26 reduced the amount of lead in maple syrup, the insulation of electrical wiring, such as telephone
27 cords and holiday string lights, the amount of lead that leaches into drinking water from
28 galvanized plumbing products, and the amount of bio-available lead on the surfaces of exercise

1 weights and hand tools. Mateel has also used a similar programmatic and litigation strategy to
2 reduce the concentration of PCBs and dioxins allowed in fish oil supplements. In every such
3 Proposition 65 enforcement action involving lead, the defendant raises as an affirmative defense
4 the regulatory safe harbor level that OEHHA enacted for lead. In those cases, defendants argue
5 that the exposures to lead for which they are responsible are less than OEHHA's regulatory safe
6 harbor level for lead exposure of 0.5 ug/day, and that the exposures at issue are thus exempt from
7 the Health & Saf. Code § 25249.6 warning requirement. OEHHA's continued maintenance and
8 enforcement of the 0.5 ug/day regulatory safe harbor level for lead exposure frustrates and unduly
9 complicates Mateel's program goal of enforcing Proposition 65 and reducing the exposure of
10 California residents to lead.

11 3. Defendant/Respondent CALIFORNIA OFFICE OF ENVIRONMENTAL
12 HEALTH HAZARD ASSESSMENT is an entity within the California Environmental Protection
13 Agency in the State of California ("Cal/EPA"). The California Office of Environmental Health
14 Hazard Assessment and its predecessor agency, the Health and Welfare Agency, are referred to
15 collectively herein as "OEHHA." OEHHA provides toxicological and medical information
16 relevant to decisions involving public health to state agencies, including all boards and
17 departments within Cal/EPA, as well as the Department of Public Health, the Department of
18 Food and Agriculture, the Office of Emergency Services, the Department of Pesticide
19 Regulation, the Department of Fish and Wildlife and the Department of Justice. Health & Saf.
20 Code § 25249.12(a) authorizes the Governor to designate a lead agency that may be required to
21 implement Proposition 65 by adopting regulations, standards and permits "to further its
22 purposes." The Governor has designated OEHHA as the lead agency to adopt regulations,
23 standards and permits needed to implement Proposition 65 and to further its purposes. OEHHA
24 enacted the amendment to Cal. Code Regs., tit. 27, § 25805(b) that set 0.5 ug/day as the
25 regulatory safe harbor level for lead exposure. OEHHA continues to maintain and enforce the
26 0.5 ug/day regulatory safe harbor level.

27 4. Defendant/Respondent GEORGE ALEXEEF is the Director of OEHHA and as
28 such had and has a duty to carry out the laws of the State of California pertaining to Proposition

1 65. Defendant/Respondent Alexeeff is sued in his official capacity.

2 5. Mateel does not know the true names and capacities of Defendants/Respondents
3 Does 1 through 10, inclusive, which Defendants/Respondents are therefore sued by such
4 fictitious names. Mateel is informed and believes and therefore alleges on information and belief
5 that each person or entity designated as Doe 1 through 10 is responsible in some manner for the
6 unlawful acts alleged in this petition. Mateel will amend this complaint when the true names and
7 capacities of each Doe defendant has been ascertained.

8 6. Defendants/Respondents OEHHA, Alexeeff, and Does 1 through 10 are referred to
9 herein collectively as "Defendants."

10 **JURISDICTION AND VENUE**

11 7. The Court has jurisdiction over this petition for writ of mandate and complaint for
12 declaratory and injunctive relief pursuant to California Code of Civil Procedure ("CCP") §§ 525,
13 526, 1060, and 1085, Government Code § 11350(a) and California Constitution Article VI,
14 section 10.

15 8. This Court has jurisdiction over Defendants because each is a citizen or executive
16 agency of the State of California so as to render the exercise of jurisdiction over it by the
17 California courts consistent with traditional notions of fair play and substantial justice.

18 9. Venue is proper in Alameda Superior Court pursuant to CCP § 393 because this
19 action arises in part in Alameda County and this is an action against a public officer or person
20 especially appointed to execute the duties of a public officer, for an act done by the officer or
21 person in virtue of the office, or against a person who, by the officer's command or in the
22 officer's aid, does an act touching the duties of the officer.

23 10. Venue is further proper in Alameda Superior Court pursuant to CCP § 401
24 because this is an action against the State, or department, officer, or other agency thereof, that
25 may be commenced in the County of Sacramento, and therefore may also be commenced in any
26 county in which the California Attorney General has an office. The California Attorney General
27 has an office in the County of Alameda.

28

FACTUAL BACKGROUND

1
2 11. In 1986 California voters enacted the Safe Drinking Water and Toxic
3 Enforcement Act of 1986, commonly known as Proposition 65 (or, “the Act”), now codified at
4 Health & Saf. Code §§ 25249.5, *et seq.* Proposition 65 prohibits businesses from knowingly and
5 intentionally exposing California residents to chemicals known to cause cancer and/or
6 reproductive toxicity without providing a clear and reasonable warning. Health & Saf. Code
7 § 25249.6.

8 12. Health & Saf. Code § 25249.8 requires the Governor to publish a list of chemicals
9 known to the state to cause cancer or reproductive toxicity (the “List”). The List must be revised
10 and republished in light of additional scientific knowledge at least once per year. *Ibid.* Health &
11 Saf. Code § 25249.8(b) spells out the scientific basis for a chemical to be listed as known to be a
12 reproductive toxin: if it “has been clearly shown through scientifically valid testing according to
13 generally accepted principles to cause . . . reproductive toxicity”

14 13. In 1987, OEHHA listed lead as a chemical known to cause reproductive toxicity
15 under Proposition 65’s so-called “Labor Code” listing mechanism, pursuant to which chemicals
16 identified by reference in Labor Code Section 6382(b)(1) or Section 6382(d) are required to be
17 included on the List. Cal. Code Regs., tit. 27, § 27001.

18 14. OEHHA frequently revises the List by, for instance, removing chemicals from the
19 List when additional scientific knowledge contradicts the original scientific basis for placing the
20 chemical on the List. For a chemical to remain on the List, the scientific basis for its being on
21 the List must remain valid in light of current scientific knowledge.

22 15. Proposition 65 allows an exemption from its warning requirement if the person
23 responsible for the exposure can demonstrate that there would be no observable reproductive
24 effect at one-thousand (1000) times the exposure level in question “based on evidence and
25 standards of comparable scientific validity to the evidence and standards which form the
26 scientific basis for the Listing of such chemical pursuant to subdivision (a) of Section 25249.8.”
27 Health & Saf. Code § 25249.10(c).
28

1 16. OEHHA has provided guidance as to how it interprets the statutory requirement
2 that the evidence used to provide an exemption from the Proposition 65 warning requirement
3 must meet the same scientific standards as those that are required for listing a chemical as a
4 known carcinogen or reproductive toxin:

5 When recommending a reproductive toxicant for Listing pursuant to
6 section 25249.8 of the Health and Safety Code, the Panel relies upon data
7 demonstrating that particular types of reproductive toxicologic effects in
8 humans or animals, in males, females, or the developing young, result
9 from exposure to the chemical. Inasmuch as the chemical is Listed for a
10 particular effect, it follows that studies producing this effect would be
11 utilized to determine the dose level at which the effect will no longer be
12 observed. Therefore, [Cal. Code Regs., tit. 22, § 12803] subsection (a)(1)
13 provides that only such studies should be used for purposes of the 'safe
14 harbor' level.

15 Final Statement of Reasons Cal. Code Regs., tit. 22, § 12803 at page 73.

16 17. On April 9, 1992, OEHHA enacted regulations that implement Health & Saf.
17 Code § 25249.10(c). Cal. Code Regs., tit. 27, § 25805. These regulations establish, for various
18 listed reproductive toxins, levels of exposure that as a matter of law are deemed to have no
19 observable effect at 1000 times that exposure level. *Ibid.* These levels are called regulatory safe
20 harbor levels, in that no Health & Saf. Code § 25249.6 warning is required for an exposure that is
21 at or below the level provided in Cal. Code Regs., tit. 27, § 25805. Nevertheless, a defendant in
22 a Proposition 65 enforcement action may still choose to introduce evidence to show that there
23 will be no observable reproductive effect at 1000 times an even higher level of exposure.

24 18. The regulatory safe harbor level that OEHHA set for lead was 0.5 ug/day. Cal.
25 Code Regs., tit. 22, § 25805(b).

26 19. OEHHA did not find that the regulatory safe harbor level it had enacted for lead
27 was based on scientifically valid testing, conducted according to generally accepted principles,
28 that clearly showed – in light of current scientific information – that there would be no
observable reproductive effect at 1000 times the 0.5 ug/day regulatory safe harbor level.

OEHHA cited no studies in support of the regulatory safe harbor level it set for lead. Rather,
OEHHA based this exemption on a federal Occupational Safety and Health Administration
("OSHA") permissible exposure limit ("PEL") of 50 micrograms per cubic meter of air for an 8-

1 hour work shift. OEHHA then assumed that a worker breathes 10 cubic meters of air during a
2 shift, yielding a limit of 500 micrograms (50 times 10) of lead in a day's work. Pursuant to
3 Proposition 65's mandatory 1000-fold safety factor, OEHHA then divided this level by 1000 to
4 get 0.5 ug/day (500 divided by 1000). At the time OEHHA relied on the OSHA PEL and its
5 supporting documentation, that information was already fourteen years old. Instead of finding
6 that there was scientifically valid testing, conducted according to generally accepted principles
7 that clearly showed a level at which there would be no observable effect, OEHHA blithely stated
8 that:

9 "[T]here is experience derived from the occupational setting which
10 suggests that exposure to certain regulated levels does not produce
 the reproductive effect of concern."

11 Final Statement of Reasons Cal. Code Regs., tit. 22, § 12805 at page 78.

12 20. The OSHA PEL was based on a determination by OSHA that exposure to lead at a
13 concentration of 50 micrograms per cubic meter of air during a work day would prevent the
14 concentration of lead in some but not all a workers' bloodstreams from exceeding 40 micrograms
15 per deciliter of blood (ug/dl).

16 21. In fact, there was nothing in the OSHA PEL or its rule making file that
17 "suggested" (let alone "clearly showed") that "exposure to certain regulated levels does not
18 produce the reproductive effect of concern." The OSHA PEL did not establish or even attempt to
19 establish a no observable reproductive effect level for lead. To the contrary, in its Federal
20 Register announcement of the lead PEL, OSHA stated that:

21 The record indicates the prevalence of health effects below 40
22 (micrograms per deciliter). This is particularly true for
23 reproductive effects of both male and females who want to plan
 pregnancies....

24 While a critical review of the literature leads to the conclusion that
25 blood lead levels of 50 to 60 µg [micrograms]/100 ml are likely
26 sufficient to cause significant neurobehavioral impairments, there
27 is evidence for effects such as hyperactivity as low as 25 µg/100
28 mg. Given the available data, OSHA concludes that in order to
 protect the fetus from the effects of lead on the nervous system,
 maternal blood lead levels should be kept below 30 µg/100 g. In
 general 30 µg/100 g appears to be reasonably protective insofar as
 it will minimize enzyme inhibition (ALAD and FEP) in the heme
 biosynthetic pathway and should minimize neurological damage.

1 OSHA agrees with the Center for Disease Control (Ex. 2 (15)) and
2 the National Academy of Sciences (Ex. 86M) that the blood lead
3 level in children should be maintained below 30 µg/100 g. Levels
4 above 30 µg/100 g should be considered elevated . . .

5 OSHA cannot guarantee that 30 µg/100 g is a “no effect” level but
6 it would provide marked protection to the fetus and therefore to the
7 reproductive capacity of the worker . . .

8 In recognition of the inability of the PEL alone to protect the
9 reproductive capacity of all workers at all times, the standard
10 includes a variety of additional protective elements designed to
11 minimize reproductive risks.

12 29 C.F.R. § 1910, 43 Fed. Reg. 54422-23, November 21, 1978. Thus, the OSHA PEL was not
13 designed neither to determine nor to reflect a no observable effect level and thus never could
14 serve as a valid basis for establishing a safe harbor level for lead exposure at 0.5 ug/day.

15 22. In the same regulation that created the PEL, OSHA also set an “Action Level” of
16 30 micrograms per meter cubed, or 40 percent below the PEL. Had OEHHA used this level in
17 setting the safe harbor level for lead, the level would have been 0.3 ug/day. Companies that
18 expose workers to this lower level of lead are required to implement monitoring until they can
19 show that multiple measurements, taken at specified time periods, are below the Action Level.

20 23. Since 1979, when OSHA developed the standard adopted by OEHHA for the lead
21 safe harbor level, repeated studies have found that levels of lead exposure previously thought to
22 be safe are in fact harmful. The Center For Disease Control and Prevention (“CDC”) has
23 reduced its blood lead “Level of Concern” from 30 ug/dl in the 1970’s, to 10 ug/dl in the early
24 2000’s, to today when, instead using the term “Level of Concern” – which falsely connotes that
25 there is no need for concern below that level -- CDC uses a 5 ug/dl “reference value,” which is
26 now used to identify children who require case management due to lead exposure.

27 24. Despite this, OEHHA has failed to re-evaluate the regulatory safe harbor level it
28 set for lead in light of additional or current scientific knowledge, including additional scientific
29 knowledge and findings that OEHHA itself has made in non-Proposition 65 contexts about the
30 neurodevelopmental effects of low-level lead exposure and the lack of a scientific basis for
31 finding a no observable effect level for low level lead exposures.

1
2 25. For instance, in 1997 OEHHA reviewed the then-existing literature on the
3 neurodevelopmental and neurobehavioral effects of low-level Lead exposure. Cal. EPA, Air
4 Resources Board, *Technical Support Document, Proposed Identification of Inorganic Lead as a*
5 *Toxic Air Contaminant, Part B Health Assessment* (March 1997) (“1997 OEHHA-CARB
6 Assessment”). This review considered several then-existing large-scale epidemiological studies
7 of the effect low-level lead exposure had on intelligence in children. *Id.* at 5-3. OEHHA
8 explicitly attempted to locate a threshold below which there would be no neurodevelopmental
9 effect of lead exposure. *Id.* at 5-4 to 5-5. Based on these studies of the effect that low-level lead
10 exposure had on children’s intelligence, OEHHA concluded that there was a continuum of
11 effects on intelligence down to the lowest observed levels of blood lead and that it was
12 impossible to identify a threshold blood lead level below which there would be no adverse health
13 effects in humans. *Ibid.*

14 26. This OEHHA finding is authoritative. One of the scientists who helped prepare
15 the OEHHA-CARB Assessment was Defendant/Respondent Alexeeff, the current OEHHA
16 Director. OEHHA explicitly found that there were enough data (and, by implication, enough
17 studies of sufficient quality) that it was not practical to even attempt to estimate a Lowest
18 Observable Adverse Effect Level (“LOAEL”) for the neurodevelopmental effects of Lead
19 exposure. 1997 OEHHA-CARB Assessment.

20 27. This OEHHA finding was confirmed four years later in OEHHA’s *Prioritization*
21 *of Toxic Air Contaminants – Children’s Environmental Health Protection Act* (October 2001).
22 Like the 1997 OEHHA-CARB Assessment, OEHHA’s 2001 *Prioritization of Toxic Air*
23 *Contaminants* found that there is no identified lead exposure threshold below which adverse
24 effects do not occur. *Id.*, at 1. OEHHA found the studies it had earlier relied upon to support its
25 no-threshold finding to be of sufficient quality to rely on again. *Id.*, at 2-4. OEHHA found that
26 key animal studies also supported its no-threshold conclusion, “[t]he enormous number of studies
27 of lead in animals supports that observed in humans.” *Id.*, at 4. OEHHA performed its own
28 simplified meta-analysis of the effects low-level lead exposure has on intelligence. *Id.*, at 3.

1 OEHHA found there to be a 0.33 IQ-point decrease per 1 µg/dL increase in blood lead level.

2 *Ibid.* Significantly, this OEHHA estimate came with a 95% confidence interval of between 0.32
3 and 0.34. *Ibid.*

4 28. Over the past decade, numerous federal agencies have conducted exhaustive peer-
5 reviewed assessments of the reproductive toxicity of lead that reached similar conclusions.

6 29. In 2007, the federal Agency for Toxic Substances and Disease Registry
7 (“ATSDR”) – an arm of the federal Centers for Disease Control and Prevention – conducted a
8 review of the available scientific evidence concerning, among other toxic endpoints, the
9 neurodevelopmental toxicity of lead. In its *Toxicological Profile for Lead*, ATSDR concurs with
10 OEHHA’s finding of a lack of threshold for neurodevelopmental effects of lead exposure.
11 ATSDR found that recent studies suggest an I.Q. decline of 1-5 points is associated with a
12 general increase of 10 µg/dL in blood lead. *Id.*, at 23. The ATSDR notes that studies in animals,
13 particularly monkeys, have provided key information for the interpretation of a cognitive basis
14 for I.Q. changes. *Ibid.* The ATSDR found that the dose-response slope for the
15 neurodevelopmental effects of lead exposure is not linear, and is steepest at the lower, rather than
16 higher, levels of exposure. *Id.*, at 25.

17 30. In June of 2013 the federal Environmental Protection Agency (“EPA”) issued its
18 Integrated Science Assessment for Lead, a comprehensive review of the current state of scientific
19 knowledge concerning the toxicology of lead. In reviewing its conclusions concerning the
20 neurodevelopmental effects of lead, EPA found clear evidence that prenatal and early childhood
21 exposures to lead caused loss of cognitive function that could be measured by, among other
22 metrics, Full Scale Intelligence Quotient. The EPA found that the association between early
23 developmental exposure to lead and loss of cognitive ability continued at levels of exposure as
24 low as could be measured and that there was no clear indication of any duration of lead exposure
25 that was necessary before there would be cognitive impairment:

26 Neither epidemiologic nor toxicological evidence has identified an
27 individual critical lifestage or time period of Pb exposure within
28 childhood that is associated with cognitive function decrements.
Several epidemiological studies found a supralinear concentration-
response relationship. Examination of children with blood Pb

1 levels in the range < 1 (at or below detection limits) to 10 µg/dL,
2 with consideration of early or peak childhood blood Pb levels, *has*
3 *not identified a threshold* for cognitive function decrements.
4 Evidence in children was clearly supported by observations of Pb-
5 induced impairments in learning, memory, and executive function
6 in rodents and monkeys. Several studies in animals indicated
7 cognitive impairments with prenatal, lactational, and lifetime (with
8 or without prenatal) Pb exposures that resulted in blood Pb levels
9 of 10-25 µg/dL. The mode of action for Pb-associated cognitive
10 function decrements is supported by observations of Pb-induced
11 impairments in neurogenesis, synaptogenesis and synaptic pruning,
12 LTP, and neurotransmitter function in the hippocampus, prefrontal
13 cortex and nucleus accumbens.

8 31. On November 22, 2013, OEHHA changed the basis for listing lead as a known
9 reproductive toxin from the "Labor Code" mechanism to the "Formally required to be labeled or
10 identified mechanism" (pursuant to which a chemical is required to be listed if OEHHA
11 determines that a state or federal agency has formally required the chemical to be labeled or
12 identified as causing cancer or reproductive harm, Cal. Code Regs., tit. 27, § 25902(a)). To date,
13 however, OEHHA has not revised the Cal. Code Regs., tit. 27 § 25805(b) regulatory safe harbor
14 level for lead, nor has OEHHA changed or amended the findings it made in enacting the Section
15 25805 regulatory safe harbor level for lead. OEHHA has not revisited the 0.5 ug/day regulatory
16 safe harbor level in light of either its erroneous initial adoption of that level or the additional
17 scientific information that has become available since the November 21, 1978 OSHA PEL was
18 published. In light of additional post-1978 information, OEHHA has not found, and has no basis
19 to find, that there would be no observable reproductive effect at a lead exposure that is 1000
20 times the 0.5 ug/day regulatory safe harbor level based on scientifically valid testing according to
21 generally accepted principles.

22 32. No state or federal agency has ever formally required lead to be labeled or
23 identified as having no observable reproductive effect at or below 500 micrograms of exposure in
24 a day.

25 33. Mateel has engaged in good-faith efforts to resolve the claims alleged herein prior
26 to filing this case. Mateel has raised the issues raised by this Petition and Complaint with
27 OEHHA personnel on numerous occasions without receiving a satisfactory response.

1
2 34. Despite Mateel's efforts, OEHHA has refused to comply with its obligations
3 under state law. Mateel has no plain, speedy, or adequate alternative remedy at law to secure the
4 relief it seeks in this Petition and Complaint.

5 **FIRST CAUSE OF ACTION**
6 **(Writ of Mandate)**

7 35. Mateel realleges and incorporates herein by reference each and every allegation of
8 paragraphs 1 through 34.

9 36. Defendants had and have a clear, present, and ministerial duty under Proposition
10 65 to refrain from enacting, implementing, maintaining and enforcing regulations that have no
11 basis in science or law.

12 37. Defendants had and have a clear, present, and ministerial duty under Proposition
13 65 to base any exemptions to Proposition 65's warning requirement "on standards of comparable
14 scientific validity to the evidence and standards which form the scientific basis for the listing of
15 such chemical pursuant to subdivision (a) of Section 25249.8."

16 38. Defendants have failed to comply with their clear, present, and ministerial duty
17 under Proposition 65 by enacting, implementing, maintaining and enforcing the 0.5 ug/day
18 regulatory safe harbor level for lead exposure.

19 39. Mateel has a clear and present beneficial interest in ensuring that Defendants
20 refrain from enacting, implementing, maintaining and enforcing the 0.5 ug/day regulatory safe
21 harbor level for lead exposure. Further, Defendants' legal obligation to refrain from enacting,
22 implementing, maintaining and enforcing regulations that have no basis in science or law is a
23 matter of public right. Mateel seeks to secure compliance with Proposition 65 in the public
24 interest to ensure that OEHHA does not defeat the voters' intent in enacting this crucial health
25 and safety ballot initiative.

26 Wherefore, Mateel prays judgment against Defendants, as set forth hereafter.
27
28

1 47. An actual controversy has arisen and now exists between Mateel and OEHHA
2 concerning whether OEHHA's enactment of the 0.5 ug/day regulatory safe harbor level for lead
3 exposure – and OEHHA's continuing maintenance and enforcement of that regulatory safe
4 harbor level – violates and is contrary to California law. Mateel contends and OEHHA disputes
5 that the 0.5 ug/day regulatory safe harbor level is contrary to California law.

6 48. Mateel is therefore entitled to a judicial declaration of its rights and OEHHA's
7 duties under Government Code § 11350(a) and CCP § 1060.

8 Wherefore, Mateel prays judgment against Defendants, as set forth hereafter.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays for judgment as follows:

11 1. For a peremptory writ of mandate pursuant to CCP § 1085 requiring Defendants
12 to vacate and rescind, and not to implement or enforce the 0.5 ug/day regulatory safe harbor level
13 for lead under Proposition 65;

14 2. For an order pursuant to CCP § 1060 declaring that the 0.5 ug/day regulatory safe
15 harbor level is contrary to California law;

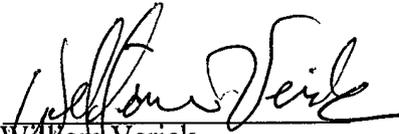
16 3. For injunctive relief, as appropriate under CCP § 525, *et seq.*;

17 4. For costs and reasonable attorneys' fees, as provided by CCP § 1021.5 and other
18 applicable law; and

19 5. For such further relief that is equitable and proper.

20 Dated: January 13, 2015

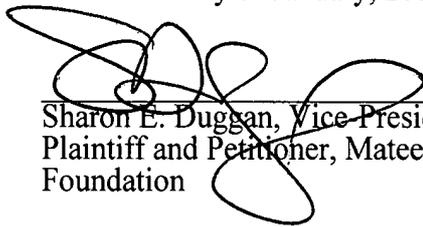
KLAMATH ENVIRONMENTAL LAW CENTER

21
22
23 By 
24 William Verick
25 Attorney for Plaintiff
26 Mateel Environmental Justice Foundation
27
28

1 VERIFICATION

2 I, Sharon E. Duggan, am an officer of Mateel Environmental Justice Foundation, Plaintiff
3 and Petitioner herein. I have read the foregoing Petition for Writ of Mandate and Complaint for
4 Declaratory Relief and Injunction on behalf of Mateel Environmental Justice Foundation. I have
5 personal knowledge of certain of the allegations set forth therein and, as to the balance of the
6 allegations, I am informed and believe that such allegations are also true. On that basis, I declare
7 under penalty of perjury that the foregoing is true and correct.

8 Executed at Oakland, California this 12th day of January, 2015.

9 

10 Sharon E. Duggan, Vice-President
11 Plaintiff and Petitioner, Mateel Environmental Justice
12 Foundation