



## Appellate Court to Decide Prop. 65 Plaintiff's Attempt to Circumvent Lead Crystal Consent Decree

LITIGATION, APPELLATE CASES, PROPOSITION 65, CHEMICALS OF INTEREST, PRODUCTS OF INTEREST

By ROGER PEARSON, February 10, 2023

The 1st District Court of Appeals is considering a trial court's dismissal of a Proposition 65 enforcement action brought by a plaintiff against a retailer of lead crystal drinkware. The case, **Mateel v. Fiskars Living US LLC<sup>1)</sup>**, has been fully briefed and is now ready for a decision on the validity of the demurrer granted by the lower court. The lower court action was brought by long-time Prop. 65 private party enforcer, the Mateel Environmental Justice Foundation (Mateel). The target of the lawsuit is a group of sellers collectively referred to "Fiskars." The glassware they sell is generally made by well-known manufacturers, such as Waterford, Wedgwood, and Royal Doulton.

The attorneys for Fiskars filed a demurrer to the Mateel complaint. On January 26, 2022 San Francisco Superior Court Judge Richard B. Ulmer granted the demurrer without leave to amend. Mateel filed this appeal and both sides have now briefed the case.

### The Trial Court Opinion

At the root of the dispute is the continued validity of a 2001 consent decree that laid out warning and enforcement requirements applicable to over 100 settling parties who are part of the leaded crystal industry. The 2001 decree, in *Mangini v. Action*, is an amendment of an agreement originally reached in 1993. The decree contains a warning regime and enforcement mechanisms. The Attorney General's office approved the settlement provisions as establishing a "safe harbor" for the settling parties from Prop. 65 enforcement actions. The decree also provided that the Attorney General has exclusive enforcement authority over any violations of the terms of the decree by any of the participating parties.

In granting the Fiskars' demurrer, Ulmer noted that he retains jurisdiction over the decree, which was originally filed in his court. He noted that the decree provides injunctive relief that is "continuing" and that "modification" of the decree is authorized by it. Ulmer concluded that granting Mateel a new Prop. 65 enforcement order would inevitably lead to conflict between the existing decree and the new order. Ulmer grounded his order granting the demurrer on the courts' "inherent powers to control litigation before them." He concluded by noting that the "Mangini case is the proper place for any modification of Prop. 65 warning requirements regarding lead crystal."

### The Parties' Briefs

In its opening and response briefs, Mateel raised several technical arguments to the granting of the demurrer—e.g. Code of Civil Procedure 430.10 does not specify that the need to manage litigation can be the basis for a demurrer. However, Mateel's appeal appears to be primarily based on its assertion that Fiskars was not a party to the consent decree and that there is no evidence that Fiskars has provided Mangini-compliant warnings. In its response, Fiskars cited the broad language of the Mangini decree, arguing that it applies to anyone selling lead crystal items, whether or not they are specifically mentioned in the original decree.

Mateel also claimed that the nearly 30-year-old decree is "over." But both Ulmer and Fiskars cited the prospective language of the decree, which provides for a continuing injunction, the active management by the Attorney General, and numerous other forward-looking provisions. Also, although it claimed the decree is now dead, Fiskars pointed out that Mateel's complaint would force the company to comply with the warning regimen specified in the decree.

Finally, in defending the consent decree, Fiskars pointed out that the decree's intent was to provide a uniform process applicable throughout the distribution chain for lead crystal devices and that the lower court was defending the decree from a collateral attack by a party within that chain in order to prevent potential chaos.

## **Resources for this article**

### **1. Mateel v. Fiskars Living US LLC**

<https://prop65clearinghouse.com/cases/8229>