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ECOLOGICAL RIGHTS FOUNDATION
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
(Unlimited Jurisdiction)
10

11 ECOLOGICAL RIGHTS FOUNDATION, CASE NO. 05-443363

12 Plaintiff,

13 v.

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES

14 PROVO CRAFT & NOVELTY, INC.,
15 PROVO CRAFT, INC., and DOES 1 through
100 INCLUSIVE

16 Defendants.
17 _____/

TOXIC TORT/ENVIRONMENTAL
JURY TRIAL REQUESTED
18

19 ECOLOGICAL RIGHTS FOUNDATION alleges as follows:
20

21 INTRODUCTION

22 1. This Complaint seeks civil penalties and an injunction to remedy the continuing
23 failure of Defendants to give clear and reasonable warnings to residents of California, who
24 handle and/or use glass suncatchers which contain leaded glass inserts, leaded mullions, leaded
25 coming or lead solder (collectively "Leaded glass suncatchers" or "products"), manufactured,
26 distributed, marketed and/or sold by Defendants. The handling and/or use of such products
27 causes those residents to be exposed to lead and lead compounds, chemicals known to the State
28 of California to cause cancer, birth defects and other reproductive harm.

1 7. Defendant PROVO CRAFT, INC. is a person doing business within
2 the meaning of Health & Safety Code section 25249.11.

3 8. Unless otherwise noted, Defendants are collectively hereafter referred to as
4 Defendants.

5 9. Each and every Defendant is a business that manufactures, distributes, sells
6 and/or markets Leaded glass suncatchers in California, including the City and County of San
7 Francisco. Manufacture, distribution, sale and/or marketing of these products in the City and
8 County of San Francisco causes people to be exposed to lead and lead compounds while they are
9 physically present in the City and County of San Francisco.

10 10. Each and every Defendant is a business that employs ten or more people.

11 11. ERF is unaware of the true names or capacities of the Defendants sued herein
12 under the fictitious names DOES 1 through 100, inclusive. Defendants DOES 1 through 100
13 inclusive are therefore sued herein pursuant to Cal. Code Civ. Proc. section 474. When ERF
14 learns their identities, it will amend the complaint.

15 JURISDICTION

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

22 13. This Court also has jurisdiction over Defendants because they are businesses that
23 have sufficient minimum contacts in California and within the City and County of San Francisco.
24 Defendants intentionally availed themselves of the California and San Francisco County markets
25 for Leaded glass suncatchers. It is thus consistent with traditional notions of fair play and
26 substantial justice for the San Francisco Superior Court to exercise jurisdiction over them.

27 14. Plaintiff brings this enforcement action against Defendants pursuant to Health &
28 Safety Code section 25249.7(d). On or about April 26, 2005, ERF sent 60-Day Notices of

1 Proposition 65 violations to Defendants, to California's Attorney General, to every District
2 Attorney in the State, and to the City Attorneys of every California city with a population greater
3 than 750,000. These notices were issued pursuant to, and in compliance with, the requirements
4 of Health & Safety Code section 25249.7(d) and the statute's implementing regulations regarding
5 the notice of the violations to be given to certain public enforcement agencies and to the violator.
6 Attached to the 60-Day Notice Letters sent to each Defendant was a summary of Proposition 65
7 that was prepared by California's Office of Environmental Health Hazard Assessment. Each 60-
8 Day Notice Letter Plaintiff sent was accompanied by a Certificate of Service and a Certificate of
9 Merit. In addition, the 60-Day Notice Letter which Plaintiff sent to California's Attorney
10 General was accompanied by the information required by California Code of Regulations, title
11 11, section 3102.

12 VENUE

13 15. Venue is proper in this Court because each of the Defendants markets, sells
14 and/or distributes their products in and around San Francisco, has violated one or more of the
15 California laws specified herein in the City and County of San Francisco, and has caused people
16 to be exposed to lead and lead compounds while those people are physically present in San
17 Francisco. Liability for Plaintiff's causes of action, or some parts thereof, has accordingly arisen
18 in San Francisco during the times relevant to this Complaint.

19 FIRST CAUSE OF ACTION 20 (Claim for Injunctive Relief)

21 16. Plaintiff realleges and incorporates by reference the allegations contained in the
22 preceding paragraphs.

23 17. The People of the State of California have declared by referendum under
24 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer."

25 18. 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(s) prior to the exposure.

19. Since at least April, 26, 2001, each and every Defendant has engaged in conduct

1 which violates Health and Safety Code section 25249.6 et seq. This conduct includes knowingly
2 and intentionally exposing to lead and lead compounds, California residents who handle and/or
3 use Leaded glass suncatchers. The normally intended use of Leaded glass suncatchers causes
4 exposure to lead and lead compounds, which are chemicals known to the State of California to
5 cause cancer, birth defects and other reproductive harm. Defendants have not provided clear
6 and reasonable warnings, within the meaning of Health & Safety Code sections 25249.6 and
7 25249.11.

8 20. At all times relevant to this action, Defendants knew that the Leaded glass
9 suncatchers they manufactured, distributed, sold and/or marketed were causing exposures to lead
10 and lead compounds. Defendants intended that residents of California handle and/or use Leaded
11 glass suncatchers in such ways as would result in significant exposures to these chemicals.

12 21. By the above described acts, each Defendant has violated Health & Safety Code
13 section 25249.6 and are therefore subject to an injunction ordering them to stop violating
14 Proposition 65 and requiring them to provide warnings to their past customers who purchased
15 Defendants' products without receiving a clear and reasonable warning.

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

18 22. Plaintiff realleges and incorporates by reference the allegations contained in the
19 preceding paragraphs..

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

24 THIRD CAUSE OF ACTION
25 Declaratory Relief Regarding Actual and Present Controversy over Defendants' Compliance
26 with Proposition 65
27 (Code of Civil Procedure section 1060)

28 24. Plaintiff hereby reallege and incorporate by reference the allegations contained in
the preceding paragraphs.

25 25. An actual and present controversy exists between Plaintiff and Defendants as to

1 whether Defendants are fully complying with Proposition 65.

2 26. Plaintiff contend that Defendants, and each of them, have failed to fully comply
3 with Proposition 65 as alleged in this Complaint.

4 27. Defendants deny each of Plaintiff' contentions.

5 28. Plaintiff seek a judicial determination and declaration that Defendants have an
6 obligation to fully comply with Proposition 65.

7 29. Such a declaration is necessary and appropriate at this time in order that Plaintiff
8 may ascertain the right to have Defendants act in accordance with the obligations under
9 Proposition 65.

10 30. Unless restrained by this Court, Defendants will continue to violate Proposition
11 65.

12 31. Said course of conduct by Defendants irreparably harms and will continue to
13 irreparably harm Plaintiff in that Defendants' actions knowingly and intentionally expose
14 individuals to a chemical known to the State of California to cause cancer or birth defects
15 without first providing a clear and reasonable warning to such individuals prior to the exposure.

16 32. Plaintiff have no adequate remedy in the ordinary course of law to obtain relief
17 from the consequences of said actions by Defendants for the harms alleged herein.

18 PRAYER FOR RELIEF

19 Wherefore, Plaintiff prays for the following relief against Defendants:

20 1. Pursuant to the First Cause of Action, a preliminary and permanent injunction
21 enjoining, restraining, and ordering all Defendants to comply with the provisions of Section
22 25249.6 of the California Health & Safety Code;

23 2. Pursuant to the First Cause of Action, a preliminary and permanent injunction
24 enjoining, restraining, and ordering all Defendants to identify and locate each individual who
25 purchased Leaded glass suncatchers from April 26, 2001 to the present and notify all such
26 individuals that 1) the Leaded glass suncatchers cause an exposure to lead, a chemical known to
27 the State of California to cause cancer and birth defects, 2) certain actions can be taken to
28 minimize that exposure, and 3) they may return any such purchase for a full refund;

1 3. Pursuant to the Second Cause of Action, that each Defendant be assessed a civil
2 penalty in an amount equal to \$2,500.00 per day per individual exposed to lead and lead
3 compounds from April 26, 2004 to the present for violation of Section 25249.6 of the California
4 Health & Safety Code, as the result of Defendants' manufacturing, distributing, selling and/or
5 marketing of Leaded glass suncatchers in California without the proper clear and reasonable
6 warning;

7 4. Pursuant to the Third Cause of Action, for a judicial determination and
8 declaration that Defendants are obliged to comply with Proposition 65.;

9 5. For costs of the suit incurred herein;

10 6. For attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure; and

11 7. For such other relief as this Court deems just and proper.

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14 Dated: July 22, 2005

By _____
Brian Gaffney
Attorney for Plaintiff
Environmental Rights Foundation