

1 Stephen S. Sayad, State Bar No. 104866  
2 Josh Voorhees, State Bar No. 241436  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 LAURENCE VINO CUR

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 15 2013

CLERK OF THE COURT

BY: DENNIS TOYAMA  
Deputy Clerk

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
14  
15 UNLIMITED CIVIL JURISDICTION

16 LAURENCE VINO CUR,

17 Plaintiff,

18 v.

19 CELEBRATION CREATIONS, INC.;  
20 WALGREEN CO.; and DOES 1-150,  
21 inclusive,

22 Defendants.

Case No.

CGC-13-531451

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6, *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff LAURENCE  
3 VINOCUR in the public interest of the citizens of the State of California to enforce the People’s  
4 right to be informed of the presence of lead, a toxic chemical found in children’s sports themed  
5 baskets sold in California.

6 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failures to  
7 warn California citizens about the risks of exposure to lead present in and on the children’s  
8 sports themed baskets manufactured, distributed, and offered for sale or use to consumers  
9 throughout the State of California.

10 3. Detectable levels of lead are commonly found in and on the children’s sports  
11 themed baskets that Defendants manufacture, distribute, sell, and offer for sale to consumers,  
12 many of whom are infants and children, throughout the State of California. Individuals in  
13 California, including infants and children, are exposed to lead when they touch and when they  
14 bring into contact with the mouth lead released from children’s sports themed baskets.

15 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
16 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
17 doing business shall knowingly and intentionally expose any individual to a chemical known to  
18 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
19 warning to such individual . . . .” (Cal. Health & Safety Code § 25249.6.)

20 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed  
21 lead as a chemical known to cause birth defects and other reproductive harm. Lead became  
22 subject to the “clear and reasonable warning” requirements of the Act one year later on  
23 February 27, 1988. (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
24 25249.10(b).)

25 6. Lead is hereinafter referred to as the “LISTED CHEMICAL.”

26 7. Defendants cause products containing the LISTED CHEMICAL without a  
27 warning to be sold in California as follows:  
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1 toxic exposures from consumer products, and he brings this action in the public interest  
2 pursuant to Health and Safety Code § 25249.7(d).

3 13. Defendant CELEBRATION CREATIONS, INC. (“CELEBRATION  
4 CREATIONS”) is a person in the course of doing business within the meaning of Health and  
5 Safety Code § 25249.11.

6 14. CELEBRATION CREATIONS manufactures, imports, distributes, sells, and/or  
7 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
8 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
9 State of California.

10 15. Defendant WALGREEN CO. (“WALGREEN”) is a person in the course of doing  
11 business within the meaning of Health and Safety Code § 25249.11.

12 16. WALGREEN manufactures, imports, distributes, sells, and/or offers the  
13 PRODUCTS for sale of use in the State of California, or implies by its conduct that it  
14 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
15 State of California.

16 17. Defendants DOES 1-150 are each persons in the course of doing business within  
17 the meaning of Health and Safety Code § 25249.11(b), which manufacture, distribute, sell,  
18 and/or offer the PRODUCTS for sale in the State of California. At this time, the true names and  
19 capacities of defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who,  
20 therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure §  
21 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously  
22 named defendants is responsible for the acts and occurrences alleged herein. When ascertained,  
23 their true names and capacities shall be reflected in an amended complaint.

24 18. CELEBRATION CREATIONS, WALGREEN, and Defendants DOES 1-150 are  
25 hereinafter collectively referred to as “Defendants.”  
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1 **VENUE AND JURISDICTION**

2 19. Venue is proper in San Francisco County Superior Court, pursuant to Code of  
3 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because plaintiff seeks civil penalties against Defendants, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in this County, and/or because Defendants  
6 conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

7 20. The California Superior Court has jurisdiction over this action pursuant to Article  
8 VI, § 10, of the California Constitution, which grants the Superior Court “original jurisdiction in  
9 all causes except those given by statute to other trial courts.” The statute under which this  
10 action is brought does not specify any other basis of subject matter jurisdiction.

11 21. The California Superior Court has jurisdiction over Defendants based on  
12 plaintiff’s information and good faith belief that each Defendant is a person, firm, corporation or  
13 association that is a citizen of the State of California, has sufficient minimum contacts in the  
14 State of California, and/or otherwise purposefully avails itself of the California market.  
15 Defendants’ purposeful availment of California as a marketplace for the PRODUCTS renders  
16 the exercise of personal jurisdiction by California courts over Defendants consistent with  
17 traditional notions of fair play and substantial justice.

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65 - Against All Defendants)**

20 22. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
21 Paragraphs 1 through 21, inclusive.

22 23. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
23 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
24 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
25 harm.”

26 24. Proposition 65 states, “[n]o person in the course of doing business shall  
27 knowingly and intentionally expose any individual to a chemical known to the state to cause  
28

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual . . . .” (Health & Safety Code § 25249.6.)

3 25. On November 21, 2012, plaintiff’s sixty-day notice of violation, together with the  
4 requisite certificate of merit, was provided to CELEBRATION CREATIONS and certain public  
5 enforcement agencies stating that, as a result of Defendants’ sales of the PRODUCTS  
6 containing the LISTED CHEMICAL, purchasers and users in the State of California were being  
7 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable uses of the  
8 PRODUCTS, without the individual purchasers and users first having been provided with a  
9 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

10 26. On March 4, 2013, plaintiff’s sixty-day notice of violation, together with the  
11 requisite certificate of merit, was provided to CELEBRATION CREATIONS, WALGREEN,  
12 and certain public enforcement agencies stating that, as a result of Defendants’ sales of the  
13 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the State of  
14 California were being exposed to the LISTED CHEMICAL resulting from their reasonably  
15 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
16 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
17 required by Proposition 65.

18 27. Defendants have engaged in the manufacture, importation, distribution, sale, and  
19 offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,  
20 and Defendants’ violations have continued to occur beyond sixty days of their receipt of  
21 plaintiff’s sixty-day notices of violation. As such, Defendants’ violations are ongoing and  
22 continuous in nature, and will continue to occur in the future.

23 28. After receiving plaintiff’s sixty-day notices of violation, and more than sixty days  
24 having passed since receipt of each such notice, the appropriate public enforcement agencies  
25 have failed to commence and diligently prosecute a cause of action against Defendants under  
26 Proposition 65.

1           29.    The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
2 or use in California by Defendants contain the LISTED CHEMICAL such that they require a  
3 “clear and reasonable” warning under Proposition 65.

4           30.    Defendants knew or should have known that the PRODUCTS they manufacture,  
5 import, distribute, sell, and offer for sale or use in California contain the LISTED CHEMICAL.

6           31.    The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
7 expose individuals to the LISTED CHEMICAL through dermal contact, ingestion, and/or  
8 inhalation during reasonably foreseeable uses of the PRODUCTS.

9           32.    The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
10 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
11 defined by Title 27 of the California Code of Regulations, § 25602(b).

12           33.    Defendants had knowledge that the normal and reasonably foreseeable uses of the  
13 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact, ingestion,  
14 and/or inhalation.

15           34.    Defendants intended that such exposures to the LISTED CHEMICAL from the  
16 reasonably foreseeable uses of the PRODUCTS would occur by Defendants’ deliberate, non-  
17 accidental participation in the manufacture, importation, distribution, sale, and offering of the  
18 PRODUCTS for sale or use to individuals in the State of California.

19           35.    Defendants failed to provide a “clear and reasonable warning” to those consumers  
20 and other individuals in the State of California who were or who would become exposed to the  
21 LISTED CHEMICAL through dermal contact, ingestion, and/or inhalation during the  
22 reasonably foreseeable uses of the PRODUCTS.

23           36.    Defendants’ failures to warn consumers and/or other individuals in the State of  
24 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*  
25 *seq.*, about their exposures to LISTED CHEMICAL in conjunction with Defendants’  
26 distribution, importation, manufacturing, and/or sale of the PRODUCTS, is a violation of  
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1 Proposition 65 and subjects Defendants to enjoinder of such conduct as well as civil penalties  
2 for each such violation.

3 37. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
4 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day for each  
5 violation.

6 38. As a consequence of the above-described acts, Health and Safety Code  
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against Defendants.

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against Defendants, and each of them, as  
10 follows:

11 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil  
12 penalties against Defendants in the amount of \$2,500 per day for each violation;

13 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily  
14 and permanently enjoin Defendants from manufacturing, distributing, selling, or offering the  
15 PRODUCTS for sale or use in California without first providing a “clear and reasonable  
16 warning” as defined by Title 27 of the California Code of Regulations, § 25601 *et seq.*, as to the  
17 harms associated with exposures the LISTED CHEMICAL;

18 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

19 4. That the Court grant such other and further relief as may be just and proper.

20  
21 Dated: May 15, 2013

THE CHANLER GROUP

22  
23 By: 

24 Stephen S. Sayad  
25 Attorneys for Plaintiff  
26 LAURENCE VINO CUR  
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