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Attorneys for Plaintiff  
LAURENCE VINO CUR

**FILED**

APR 28 2015

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

LAURENCE VINO CUR,

Plaintiff.

v.

ROSS ACQUISITION CO.; and DOES 1-150,  
inclusive,

Defendants.

Case No.

*CV* 1501550

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

1  
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  
4 People’s right to be informed of the presence of lead, a toxic chemical found in mugs with  
5 exterior designs sold in the State of California.

6           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn California citizens about reproductive toxicity associated with their exposure to lead  
8 present in or on mugs with exterior designs that defendants manufacture, import, distribute, sell  
9 and/or offer for sale to consumers throughout the State of California.

10          3.     High levels of lead are commonly found in and on mugs with exterior designs that  
11 defendants manufacture, import, distribute, sell and/or offer for sale to consumers throughout  
12 the State of California.

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

18          5.     On February 27, 1987, California identified and listed lead as a chemical known  
19 to cause birth defects and other reproductive harm. Lead became subject to the warning  
20 requirement one year later and was therefore subject to the “clear and reasonable warning”  
21 requirements of Proposition 65 beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal.*  
22 *Health & Safety Code § 25249.8.*) Lead is hereinafter referred to as the “LISTED  
23 CHEMICAL.”

24          6.     Defendants manufacture, import, distribute, sell and/or offer for sale in California  
25 mugs with exterior designs containing the LISTED CHEMICAL without a warning including,  
26 but not limited to, the *Galerie Sock Monkey Holiday Cocoa Set, #871345170, UPC #7 68395*  
27 *46639 8.*





1 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
2 County with respect to the PRODUCTS.

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

7 24. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,  
9 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
10 State of California, or otherwise purposefully avails itself of the California market.  
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

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

15 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 24, inclusive.

17 26. The citizens of the State of California have expressly stated in the Safe Drinking  
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
19 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
20 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

21 27. Proposition 65 states, “[n]o person in the course of doing business shall  
22 knowingly and intentionally expose any individual to a chemical known to the state to cause  
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
24 individual...” (*Ibid.*)

25 28. On or about July 11, 2014, a sixty-day notice of violation, together with the  
26 requisite certificate of merit, was provided to ROSS and various public enforcement agencies  
27 stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS purchasers and users in  
28 the State of California were being exposed to the LISTED CHEMICAL resulting from the

1 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
2 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
4 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety  
5 Code § 25249.6, and DEFENDANTS’ manufacture, importation, distribution, sales, and/or  
6 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §  
7 25249.6 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notice  
8 of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and  
9 will continue to occur in the future.

10 30. After receipt of the claims asserted in the sixty-day notice of violation, the  
11 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
12 cause of action against DEFENDANTS under Proposition 65.

13 31. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for  
14 sale or use in California by DEFENDANTS contained the LISTED CHEMICAL in an amount  
15 above the allowable State limits.

16 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
17 imported, distributed, sold, and/or offered for sale or use in California contained the LISTED  
18 CHEMICAL.

19 33. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
20 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during  
21 the reasonably foreseeable use of the PRODUCTS.

22 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
23 continues to cause, consumer and workplace exposures to the LISTED CHEMICAL, as such  
24 exposure is defined by Title 27 CCR § 25602(b).

25 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
26 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
27 and/or ingestion.



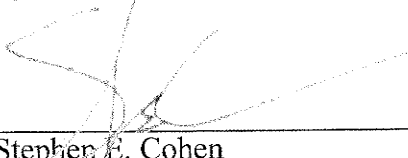
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: April 27, 2015

Respectfully Submitted,

THE CHANLER GROUP

By:   
\_\_\_\_\_  
Stephen E. Cohen  
Attorneys for Plaintiff  
LAURENCE VINOCUR