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**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 25 2015

CLERK OF THE SUPERIOR COURT
By Maria Carrera
Maria Carrera, Deputy

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

RG15775498

PAUL WOZNIAK,) Case No. _____
)
Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
v.)
) (Health & Safety Code § 25249.5 *et seq.*)
CERTIFIED INTERNATIONAL CORP.; and)
DOES 1-150, inclusive,)
)
Defendants.)

RV FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff PAUL WOZNIAK
3 in the public interest of the citizens of the State of California to enforce the People's right to be
4 informed of the health hazards caused by exposures to lead, a toxic chemical found in mugs
5 with exterior designs sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens and other individuals about the risks of exposure to lead present in and
8 on mugs with exterior designs manufactured, distributed, and offered for sale or use to
9 consumers and other individuals throughout the State of California.

10 3. Detectable levels of lead are found in and on the mugs with exterior designs that
11 defendants manufacture, distribute, and offer for sale to consumers and other individuals
12 throughout the State of California.

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

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

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
24 hazard warnings in California, mugs with exterior designs containing lead. Defendants also
25 manufacture, distribute, import, sell and/or offer for sale without health hazard warnings in
26 California, the *World's Best Mom 15 oz. Ceramic Mug, Item #24047, UPC # 7 30384 24047 0*.
27 All such mugs with exterior designs containing lead, including the *World's Best Mom 15 oz.*

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1 Ceramic Mug, Item #24047, UPC # 7 30384 24047 0 are referred to collectively hereinafter as
2 "PRODUCTS."

3 7. Defendants' failure to warn consumers, workers and other individuals in the State
4 of California not covered by California's Occupational Safety Health Act, Labor Code section
5 6300 et seq. of the health hazards associated with exposures to lead in conjunction with
6 defendants' sales of the PRODUCTS are violations of Proposition 65, and subject defendants,
7 and each of them, to enjoinder of such conduct as well as civil penalties for each violation.
8 Health & Safety Code § 25249.7(a) & (b)(1).

9 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel defendants to provide purchasers or users of the
11 PRODUCTS with the required warning regarding the health hazards associated with exposures
12 to lead. Health & Safety Code § 25249.7(a).

13 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
14 penalties against defendants for their violations of Proposition 65.

15 PARTIES

16 10. Plaintiff PAUL WOZNIAK is a citizen of the State of California who is dedicated
17 to protecting the health of California citizens through the elimination or reduction of toxic
18 exposures from consumer products; and he brings this action in the public interest pursuant to
19 Health and Safety Code section 25249.7(d).

20 11. Defendant CERTIFIED INTERNATIONAL CORP. ("CERTIFIED") is a person
21 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
22 and 25249.11.

23 12. CERTIFIED manufactures, imports, distributes, sells, and/or offers the
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

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1 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
2 person in the course of doing business within the meaning of Health and Safety Code sections
3 25249.6 and 25249.11.

4 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
7 California.

8 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
9 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
10 and 25249.11.

11 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
13 in the State of California.

14 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

17 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
18 State of California.

19 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
20 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
21 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
22 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
23 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

24 20. CERTIFIED, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
26 referred to as "DEFENDANTS."

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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
3 Procedure sections 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
6 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect
7 to the PRODUCTS.

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

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

18 **FIRST CAUSE OF ACTION**

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

20 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
21 Paragraphs 1 through 23, inclusive.

22 25. 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 26. 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
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1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual . . .” Health & Safety Code § 25249.6.

3 27. On December 22, 2014, plaintiff served a sixty-day notice of violation, together
4 with the requisite certificate of merit, on CERTIFIED and certain public enforcement agencies
5 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing lead,
6 purchasers and users in the State of California were being exposed to lead resulting from their
7 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
8 having been provided with a “clear and reasonable warning” regarding the harms associated
9 with such exposures, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.
13 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in
14 the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate
16 public enforcement agencies have commenced and diligently prosecuted a cause of action
17 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the
18 subject of plaintiff’s notice of violation.

19 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
20 offer for sale or use in California cause exposures to lead as a result of the reasonably
21 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
22 consumers and other individuals in California are not exempt from the “clear and reasonable”
23 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

24 31. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufactured, imported, distributed, sold, and offered for sale or use in California contained
26 lead.

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1 32. Lead is present in or on the PRODUCTS in such a way as to expose individuals to
2 lead through dermal contact and/or ingestion during reasonably foreseeable uses of the
3 PRODUCTS including through workplace exposure to the PRODUCTS.

4 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
5 continues to cause, consumer exposures and workplace exposures to lead, as defined by title 27
6 of the California Code of Regulations, section 25602(b).

7 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
8 the PRODUCTS exposed individuals to lead through dermal contact and/or ingestion.

9 35. DEFENDANTS intended that exposures to lead from the reasonably foreseeable
10 use of the PRODUCTS would occur by their deliberate, non-accidental participation in the
11 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
12 consumers and other individuals in California.

13 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
14 consumers and other individuals in California who were or who would become exposed to lead
15 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

16 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
17 directly by California voters, individuals exposed to lead through dermal contact and/or
18 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
19 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm
20 for which they have no plain, speedy, or adequate remedy at law.

21 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
22 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
23 for each violation.

24 39. As a consequence of the above-described acts, Health and Safety Code
25 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
26 DEFENDANTS.

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
4 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
5 each violation;

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a "clear and
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
10 25601 *et seq.*, regarding the harms associated with exposures lead;


11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations title 27, section 25601 *et seq.*;

15 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

16 5. That the Court grant such other and further relief as may be just and proper.

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18 Dated: June 24, 2015

Respectfully Submitted,
THE CHANLER GROUP

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21 By: 
22 Warren M. Klein
23 Attorneys for Plaintiff
24 PAUL WOZNIAK
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