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Attorneys for Plaintiff  
PAUL WOZNIAK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
UNLIMITED CIVIL JURISDICTION

PAUL WOZNIAK,

Plaintiff,

v.

PERFECT TIMING, INC.; and DOES 1-150,  
inclusive,

Defendants.

Case No. **15CV288973**

**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 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 about exposures to lead, a toxic chemical that is found in the exterior designs of mugs  
5 sold in California.

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

10 3. Detectable levels of lead are commonly found in and on the exterior designs of  
11 mugs that defendants import, manufacture, distribute, ship, sell and offer for sale to consumers  
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. On February 27, 1987, pursuant to Proposition 65, California identified and listed  
19 lead as a chemical known to cause birth defects or 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  
24 warning in California, mugs with exterior designs containing lead, including, but not limited to,  
25 the *Botanical Gardens 14 oz. Ceramic Mug, #5021034, UPC No. 7 39744 13507 4*. All such  
26 mugs with exterior designs containing lead are referred to collectively hereinafter as the  
27 (“PRODUCTS”).  
28





1 wrongful conduct occurred, and continue to occur, in this county, and/or because  
2 DEFENDANTS conducted, and continue to conduct, business in Santa Clara with respect to the  
3 PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

22 26. Proposition 65 states, “[n]o person in the course of doing business shall  
23 knowingly and intentionally expose any individual to a chemical known to the state to cause  
24 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
25 individual . . . .” Health & Safety Code § 25249.6.

26 27. On December 22, 2014, plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to PERFECT TIMING, and the requisite public  
28

1 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS  
2 containing lead, workers, consumers and other individuals in the State of California are being  
3 exposed to lead resulting from their reasonably foreseeable use of the PRODUCTS, without the  
4 individual purchasers and users first having received a "clear and reasonable warning"  
5 regarding such toxic exposures, as required by Proposition 65.

6 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
7 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
8 25249.6, and DEFENDANTS' violations have continued to occur beyond their receipt of  
9 plaintiff's sixty-day notice of violation. As such, DEFENDANTS' violations are ongoing and  
10 continuous in nature, and, unless enjoined, will continue to occur in the future.

11 29. After receiving plaintiff's sixty-day notice of violation, the appropriate public  
12 enforcement agencies have failed to commence and diligently prosecute a cause of action  
13 against DEFENDANTS under Proposition 65.

14 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
15 or use in California by DEFENDANTS contain lead in such a way that the reasonably  
16 foreseeable uses of these products result in exposures that require a "clear and reasonable"  
17 warning under Proposition 65.

18 31. DEFENDANTS knew or should have known that the PRODUCTS they  
19 manufacture, import, distribute, sell, and offer for sale or use in California contain lead.

20 32. Lead is present in or on the PRODUCTS in such a way as to expose individuals  
21 through dermal contact and/or ingestion during reasonably foreseeable use.

22 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
23 continues to cause, consumer exposures to lead, as such exposures are defined by title 27 of the  
24 California Code of Regulations, section 25602(b).

25 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
26 of the PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

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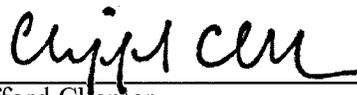
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reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601  
*et seq.*, as to the harms associated with exposures to lead;

- 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: December 14, 2015

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Clifford Chanler  
Attorneys for Plaintiff  
PAUL WOZNIAK