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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13
14 LARRY LEE,

15 Plaintiff,

16 v.

17 ANTHROPOLOGIE, INC.; URBAN
18 OUTFITTERS, INC; and DOES 1-150,
19 inclusive,

20 Defendants.

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Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code section 25249.6 *et seq.*)

FILED
ALAMEDA COUNTY
2015 JUN 22 PM 3:29
CLERK OF THE SUPERIOR COURT
M. SALCIDO, DEPUTY

RG15775087

1 NATURE OF THE ACTION

2 1. California's Safe Drinking Water and Toxic Enforcement Act ("Proposition 65" or
3 "the Act"), Health and Safety Code § 25249.5, et seq., prohibits any person in the course of
4 doing business from knowingly and intentionally exposing any individual to a chemical known
5 to the State of California to cause cancer or reproductive toxicity, without first giving clear and
6 reasonable warning of such exposure. Health and Safety Code § 25249.6. This prohibition
7 applies with equal force against business entities that manufacture, distribute, or sell consumer
8 products, where the reasonable intended use of such products would result in an exposure to a
9 known carcinogen.

10 2. This is a representative action in the public interest of the citizens of the State of
11 California to protect users in California, including children, adults, pregnant women, and
12 women of childbearing age from exposure to lead and lead compounds in ceramic dishware
13 designed and specifically marketed for use with food and other household activities.

14 3. Lead and lead compounds are known to the State of California to be reproductive
15 and developmental toxins and carcinogens.

16 4. Humans are exposed to lead and lead compounds through a variety of means,
17 including ingestion, either through direct oral contact with the ceramic dishware or indirectly, as
18 through consuming food stored in ceramic dishware or through hand to mouth exposure
19 following contact with ceramic dishware. These exposures to a reproductive toxin and
20 carcinogens result from the reasonably foreseeable use of commercially marketed ceramic
21 dishware containing lead and lead compounds. The citizens of California have the right to be
22 informed of the presence of lead and lead compounds found in or on ceramic dishware
23 manufactured, distributed, and sold or otherwise offered for use in California by Defendants
24 ("PRODUCTS").

25 5. Each Defendant has failed to provide a clear and reasonable warning that the use
26 of ceramic dishware that they have manufactured, distributed, or sold will result in exposure to
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1 lead and lead compounds, which are known to the State of California to cause reproductive
2 toxicity and cancer.

3 6. Accordingly, by this Complaint, plaintiff seeks an order requiring Defendants
4 either discontinue any manufacture, distribution, or sale of the PRODUCTS or provide a clear
5 and reasonable warning that use of the PRODUCTS will result in exposure to a chemical known
6 to the State of California to cause cancer and reproductive toxicity. Plaintiff also seeks civil
7 penalties as provided for under the Act and other appropriate relief.

8 **PARTIES**

9 7. Plaintiff LARRY LEE is dedicated to protecting the health of Californians
10 through the elimination or reduction of toxic exposures from consumer products. He brings this
11 action as a private attorney general in the public interest pursuant to Health and Safety Code
12 § 25249.7(d).

13 8. Defendant ANTHROPOLOGIE, INC. ("ANTHROPOLOGIE") is a business
14 entity with ten or more employees doing business within the scope of Proposition 65. Health
15 and Safety Code § 25249.11. ANTHROPOLOGIE manufactures, distributes, imports, sells,
16 and/or offers for sale in California ceramic dishware containing lead and lead compounds,
17 including the *Heirloom Bowl 3* (HRLM Gregg F Moore #33097254, 4536 28848).

18 9. Defendant URBAN OUTFITTERS, INC. ("URBAN OUTFITTERS") is a
19 business entity with ten or more employees doing business within the scope of Proposition 65.
20 Health and Safety Code § 25249.11. URBAN OUTFITTERS manufactures, distributes, imports,
21 sells, and/or offers for sale in California ceramic dishware containing lead and lead compounds,
22 including the *Heirloom Bowl 3* (HRLM Gregg F Moore #33097254, 4536 28848).

23 10. Each of Defendants DOES 1-150 is a person in the course of doing business
24 within the meaning of Health and Safety Code § 25249.11(b), which manufactures, distributes,
25 sells, and/or offers PRODUCTS for sale in the State of California. At this time, the true names
26 and capacities of defendants DOES 1 through 150, inclusive, are unknown to Plaintiff, who,
27 therefore, sues said Defendants by their fictitious names pursuant to Code of Civil Procedure
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1 § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously
2 named Defendants is responsible for the acts and occurrences alleged herein. Plaintiff will
3 amend this Complaint and include these Doe Defendants' true names and capacities when they
4 are ascertained.

5 11. ANTHROPOLOGIE, URBAN OUTFITTERS and Defendants DOES 1-150 are
6 collectively referred to herein as "Defendants."

7 **VENUE AND JURISDICTION**

8 12. The Court has jurisdiction over this action pursuant to Health and Safety Code
9 § 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
10 California Constitution, article VI, section 10, because this case does not present a cause given
11 by statute to other trial courts.

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

19 14. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
20 Procedure §§ 393 and 395 because this Court is a court of competent jurisdiction, because
21 Plaintiff seeks civil penalties against Defendants, because one or more instances of wrongful
22 conduct occurred, and continue to occur, in Alameda County, and/or because Defendants
23 conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

24 **NOTICE REQUIREMENTS**

25 15. On or before April 22, 2015, Plaintiff's sixty-day notice of violation ("NOTICE")
26 was provided to ANTHROPOLOGIE, URBAN OUTFITTERS, and to each of those public
27 enforcement agencies to which Proposition 65 requires notice be given stating that, as a result of
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1 ANTHROPOLOGIE and URBAN OUTFITTERS's sales of the PRODUCTS, purchasers and
2 users in the State of California were being exposed to lead and lead compounds resulting from
3 their reasonably foreseeable use of these PRODUCTS, without the individual purchasers and
4 users first having been provided with a "clear and reasonable warning" regarding such toxic
5 exposures, as required by Proposition 65.

6 16. The NOTICE included, *inter alia*, the following information: the name, address,
7 and telephone number of the noticing individual; the name of the alleged violator; the statute
8 violated; the approximate time period during which violations occurred; and descriptions of the
9 violations, including the chemicals involved, the routes of toxic exposure, and the specific
10 products and type of products causing the violations. The named Defendants and the California
11 Attorney General were provided copies of the 60-Day Notice by mail. Additionally, the named
12 Defendants were each provided with a copy of a document entitled "The Safe Drinking Water
13 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as
14 Appendix A to title 27 of California Code of Regulations ("CCR") § 25903.

15 17. Each NOTICE included a certificate of merit executed by Plaintiff's attorney
16 stating that the person executing the certificate had consulted with one or more persons with
17 relevant and appropriate experience or expertise who has reviewed the facts, studies or other
18 data regarding exposure to the listed chemical that is the subject of the notice, and that, based on
19 that information, the person executing the certificate believes there is a reasonable and
20 meritorious case for this private action. Factual information sufficient to establish the basis of
21 the certificate of merit was attached to the certificate of merit served on the California Attorney
22 General.

23 18. No public prosecutor has commenced and is diligently prosecuting an action
24 against the violations at issue herein, although the notice period provided in Health and Safety
25 Code § 25249.7 has elapsed.

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1 occurring. No knowledge that the discharge, release or exposure is
unlawful is required.”

2 27 CCR § 25102(n). This knowledge may be actual or constructive. *See, e.g.*, Final Statement of
3 Reasons Revised (November 4, 1988) for former 22 CCR § 12201.

4 25. Violators of Proposition 65 are liable for civil penalties of up to \$2,500.00 per
5 day per violation, recoverable in a civil action. Health and Safety Code § 25249.7(b).

6 26. Private parties are entitled to bring an action in the public interest to enforce the
7 Act under Health and Safety Code § 25249.7 (d).

8 FACTS

9 27. The PRODUCTS are used by consumers and contain toxic lead and lead
10 compounds.

11 28. Defendants and each of them manufacture, distribute, and/or sell or offer the
12 PRODUCTS for sale or promotional purposes in California.

13 29. Defendants, in the course of doing business, know and intend that individuals will
14 purchase and use their PRODUCTS, thus exposing them to lead and lead compounds.

15 30. Defendants have failed to provide a clear and reasonable warning as required by
16 Health and Safety Code §§ 25249.6 and 25249.11(f) to users of their PRODUCTS. As a direct
17 result of Defendants’ acts and omissions, the general public in California is being regularly,
18 unlawfully, and involuntarily exposed to lead and lead compounds, which are known to be a
19 reproductive toxin and carcinogens.

20 31. The PRODUCTS continue to be manufactured, distributed, and offered for sale or
21 promotional purposes in California without a clear and reasonable warning.

22 FIRST CAUSE OF ACTION

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

24 32. Plaintiff realleges and incorporates each and every allegation contained in the
25 preceding paragraphs as though fully set forth herein.
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1 33. Lead and lead compounds are present in or on the Defendants' PRODUCTS in
2 such a way as to expose individuals in California to lead and lead compounds, as such
3 exposures are defined by California Code of Regulations title 27, section 25602(b).

4 34. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
5 or use in California require a "clear and reasonable" warning under Proposition 65.

6 35. Defendants knew or should have known that the ceramic dishware they
7 manufacture, import, distribute, sell, and offer for sale or use in California contain lead and lead
8 compounds.

9 36. Defendants intended that such exposures to lead and lead compounds from the
10 reasonably foreseeable uses of ceramic dishware would occur by Defendants' deliberate, non-
11 accidental participation in the manufacture, importation, distribution, sale, and offering of the
12 ceramic dishware for sale or use to individuals in the State of California.

13 37. Defendants failed to provide a "clear and reasonable warning" to those consumers
14 and other individuals in the State of California who were or who would become exposed to lead
15 and lead compounds through ingestion during the reasonably foreseeable uses of ceramic
16 dishware.

17 38. Defendants' violations have continued to occur beyond their receipt of Plaintiff's
18 NOTICE. As such, Defendants' violations are ongoing and continuous in nature, and will
19 continue to occur in the future.

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

23 40. As a consequence of the above-described acts, Health and Safety Code
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 Defendants.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays that the Court:

3 41. Grant civil penalties pursuant to Health and Safety Code section 25249.7(b)(1)
4 against Defendants in the amount of \$2,500 per day for each violation;

5 42. Enter such injunctions or other orders as are necessary pursuant to Health and
6 Safety Code section 25249.7(a) to prevent Defendants from exposing persons within the State
7 of California to the reproductive toxin lead and carcinogenic lead compounds caused by the
8 reasonably foreseeable use of their PRODUCTS without providing clear and reasonable
9 warnings;

10 43. Award Plaintiff reasonable attorneys' fees and costs pursuant to Code of Civil
11 Procedure § 1021.5 and as otherwise appropriate; and

12 44. Grant such other and further relief as may be just and proper.

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14 Dated: June 22, 2015

RESPECTFULLY SUBMITTED,

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16 By: 

17 Rachel Dougherty
18 Attorney for Larry Lee
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