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(ENDORSED)  
FILED

2015 DEC -7 PM 2:30

David H. Yarnall, Clerk of the Superior Court  
County of Santa Clara, California  
By: \_\_\_\_\_  
Deputy Clerk

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

PETER ENGLANDER,  
  
Plaintiff,  
  
v.  
  
DYLAN'S CANDYBAR, LLC; and  
DOES 1-150, inclusive,  
  
Defendants.

Case No. **15CV288761**  
  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
  
(Health & Safety Code § 25249.5 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiff Peter Englander in the  
3 public interest of the citizens of the State of California to enforce the People’s right to be informed  
4 of the health hazards caused by exposures to lead, a toxic chemical found in and on the  
5 ceramicware with exterior designs sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
7 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 et seq.,  
8 who purchase, use or handle defendants’ products, about the risks of exposure to lead present in and  
9 on the ceramicware with exterior designs manufactured, distributed, and offered for sale or use  
10 throughout the State of California. Individuals not covered by California’s Occupational Safety  
11 Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants’ products, are  
12 referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found in and on the ceramicware with exterior designs  
14 that defendants manufacture, distribute, and offer for sale to consumers throughout the State of  
15 California.

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

21 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed lead  
22 as a chemical known to cause birth defects (and other reproductive harm). Lead became subject to  
23 the warning requirement one year later and was therefore subject to the “clear and reasonable  
24 warning” requirements of Proposition 65, beginning on February 27, 1988. Cal. Code Regs. tit. 27,  
25 § 27001 (c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
27 hazard warnings in California, ceramicware with exterior designs that contain lead including, but  
28 not limited to, *Dylan’s Candy Bar Candy House Ceramic Jar, UPC #8 42606 05544 8*. All such

1 ceramicware with exterior designs containing lead are referred to collectively hereinafter as  
2 “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health hazards  
4 associated with exposures to lead in conjunction with defendants’ sales of the PRODUCTS are  
5 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such  
6 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

7 8. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
8 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the  
9 required warning regarding the health hazards associated with exposures to lead. Health & Safety  
10 Code § 25249.7(a).

11 9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties  
12 against defendants for their violations of Proposition 65.

13 **PARTIES**

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

18 11. Defendant Dylan’s Candybar, LLC (“DYLAN’S”) is a person in the course of doing  
19 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

20 12. DYLAN’S manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
21 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
22 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

23 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person  
24 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
25 25249.11.

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

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

7 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
8 Plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm,  
9 corporation or association that is a citizen of the State of California, has sufficient minimum  
10 contacts in the State of California, and/or otherwise purposefully avails itself of the California  
11 market. 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 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
16 Paragraphs 1 through 23, inclusive.

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

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

24 27. On September 24, 2015, Plaintiff served a sixty-day notice of violation, together with  
25 the accompanying certificate of merit, on DYLAN’S, California Attorney General’s Office, and the  
26 requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the  
27 PRODUCTS, consumers in the State of California are being exposed to lead resulting from their  
28 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear and

1 reasonable warning” regarding the harms associated with exposures to lead as required by  
2 Proposition 65.

3 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
4 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have  
5 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such,  
6 DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined, will  
7 continue in the future.

8 29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement agency  
9 has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
10 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of violation.

11 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer  
12 for sale or use in California cause exposures to lead as a result of the reasonably foreseeable use of  
13 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in  
14 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65,  
15 yet DEFENDANTS provide no clear & reasonable warning.

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

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

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

23 34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
24 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

25 35. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use of  
26 the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,  
27 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in  
28 California.



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

Dated: December 7, 2015

Respectfully submitted,  
THE CHANLER GROUP



By: \_\_\_\_\_  
Laralei Paras  
Attorneys for Plaintiff  
PETER ENGLANDER