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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

FEB 22 2016

CLERK OF THE COURT  
BY: ARLENE RAMOS  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

CGC - 16 - 550527

WHITNEY R. LEEMAN, PH.D.,  
Plaintiff,  
v.  
BEAM SUNTORY INC.; JIM BEAM  
BRANDS CO.; and DOES 1 - 150, inclusive,  
Defendants.

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

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NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff WHITNEY R. LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to Lead, a toxic chemical found in drinking glasses with exterior designs sold by defendants in California.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants' products, about the risks of exposure to Lead present in and on drinking glasses with exterior designs manufactured, distributed, and offered for sale or use throughout the State of California. Individuals not covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase, use or handle defendants' products, are referred to hereinafter as "consumers."

3. Detectable levels of Lead are found in and on drinking glasses with exterior designs that defendants manufacture, distribute, and offer for sale to consumers throughout the State of California.

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

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

6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, drinking glasses with exterior designs containing Lead including, but not limited to, the *Courvoisier Gift Set (Glass)*, UPC #0 80686 96122 2. All such drinking

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

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

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

14 **PARTIES**

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

19 11. Defendant BEAM SUNTORY INC. (“BEAM”) is a person in the course of doing  
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

24 13. Defendant JIM BEAM BRANDS CO. (“JIM BEAM”) is a person in the course of  
25 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

26 14. JIM BEAM manufactures, imports, distributes, sells, and/or offers the  
27 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
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1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
2 State of California.

3 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
4 person in the course of doing business within the meaning of Health and Safety Code sections  
5 25249.6 and 25249.11.

6 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
7 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
8 and manufacture one or more of the PRODUCTS offered for sale to consumers in the State of  
9 California.

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

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

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

19 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
20 State of California.

21 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
22 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
23 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
24 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
25 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
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1 22. BEAM, JIM BEAM, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
2 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
3 referred to as "DEFENDANTS."

4 **VENUE AND JURISDICTION**

5 23. Venue is proper in the Superior Court for the County of San Francisco, pursuant  
6 to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of  
7 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because  
8 one or more instances of wrongful conduct occurred, and continue to occur, in this county,  
9 and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco  
10 County with respect to the PRODUCTS.

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

7 29. On December 1, 2015, plaintiff served a sixty-day notice of violation, together  
8 with the accompanying certificate of merit, on BEAM, JIM BEAM, the California Attorney  
9 General’s Office, and the requisite public enforcement agencies alleging that, as a result of  
10 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being  
11 exposed to Lead resulting from their reasonably foreseeable use of the PRODUCTS, without the  
12 consumers first receiving a “clear and reasonable warning” regarding the harms associated with  
13 exposures to Lead, as required by Proposition 65.

14 30. DEFENDANTS have manufactured, imported, distributed, sold, and offered the  
15 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
16 DEFENDANTS’ violations have continued beyond their receipt of plaintiff’s sixty-day notice  
17 of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature and,  
18 unless enjoined will continue in the future.

19 31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
20 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS  
21 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
22 violation.

23 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
24 offer for sale or use in California cause exposures to Lead as a result of the reasonably  
25 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
26 consumers in California are not exempt from the “clear and reasonable” warning requirements  
27 of Proposition 65, yet DEFENDANTS provide no warning.  
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1           33. DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale in California contain Lead.

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

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

8           36. DEFENDANTS know that the normal and reasonably foreseeable use of the  
9 PRODUCTS exposes individuals to Lead through dermal contact and/or ingestion.

10          37. DEFENDANTS intend that exposures to Lead from the reasonably foreseeable  
11 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the  
12 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to  
13 consumers in California.

14          38. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
15 consumers in California who have been, or who will be, exposed to Lead through dermal  
16 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

17 Dated: February 10, 2016

18 Respectfully submitted,  
19 THE CHANLER GROUP

20 By: 

21 Christopher Tuttle  
22 Attorneys for Plaintiff  
23 WHITNEY R. LEEMAN, PH.D.  
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