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

WHITNEY R. LEEMAN,

Plaintiff,

v.

HOME ESSENTIALS & BEYOND, INC.;;
and DOES 1-150, inclusive,

Defendants.

Case No. 16CV291329

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

ENDORSED
FILED

FEB -8 PM 3:05

County of Santa Clara Superior Court
By: _____

S. Smith

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the health hazards caused by exposures to lead, a toxic chemical found in
5 glass canisters with exterior designs, glass jars with exterior designs, and glass mugs with
6 exterior designs sold by defendants in California.

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

15 3. Detectable levels of lead are found in and on the glass canisters with exterior
16 designs, glass jars with exterior designs, and glass mugs with exterior designs that defendants
17 manufacture, distribute, and offer for sale without a warning to consumers throughout the State
18 of California.

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

24 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
25 lead as a chemical known to cause birth defects and other reproductive harm. Lead became
26 subject to the “clear and reasonable warning” requirements of the act one year later on February
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1 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
2 25249.10(b).

3 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
4 hazard warnings in California, glass canisters with exterior designs, glass jars with exterior
5 designs, and glass mugs with exterior designs containing lead including, but not limited to,
6 *Chalk It Up! Canister 44 oz., Item # 9801, UPC #7 86460 09801 5, Chalk It Up! Canister 54*
7 *oz., Item # 9802, UPC #7 86460 09802 2, Chalk It Up! By Home Essentials Set of Four 15 oz*
8 *Jars with Straws, #9804, UPC #7 86460 09804 6, and Chalk It Up! By Home Essentials Set of*
9 *Four 16 oz Glass Mugs, #9750, UPC #7 86460 09750 6.* All glass canisters with exterior
10 designs, glass jars with exterior designs, and glass mugs with exterior designs containing lead
11 are referred to collectively hereinafter as “PRODUCTS.”

12 7. Defendants’ failure to warn consumers in the State of California of the health
13 hazards associated with exposures to lead in conjunction with defendants’ sales of the
14 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to
15 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
16 § 25249.7(a) & (b)(1).

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

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

23 PARTIES

24 10. Plaintiff WHITNEY R. LEEMAN is a citizen of the State of California who is
25 dedicated to protecting the health of California citizens through the elimination or reduction of
26 toxic exposures from consumer products; and she brings this action in the public interest
27 pursuant to Health and Safety Code section 25249.7(d).

1 11. Defendant HOME ESSENTIALS & BEYOND, INC. (“HOME ESSENTIALS”)
2 is a person in the course of doing business within the meaning of Health and Safety Code
3 sections 25249.6 and 25249.11.

4 12. HOME ESSENTIALS manufactures, imports, distributes, sells, and/or offers the
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
9 person in the course of doing business within the meaning of Health and Safety Code sections
10 25249.6 and 25249.11.

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

15 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
16 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
17 and 25249.11.

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

21 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
22 the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

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

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

4 20. HOME ESSENTIALS, MANUFACTURER DEFENDANTS, DISTRIBUTOR
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
6 referred to as "DEFENDANTS."

7 **VENUE AND JURISDICTION**

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

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

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

24 **FIRST CAUSE OF ACTION**

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

26 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 23, inclusive.
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1 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.”

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

9 27. On December 1, 2015, plaintiff served a sixty-day notice of violation, together
10 with the requisite certificate of merit, on HOME ESSENTIALS and certain public enforcement
11 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing lead,
12 consumers in the State of California were being exposed to lead resulting from their reasonably
13 foreseeable use of the PRODUCTS, without the consumers first having been provided with a
14 “clear and reasonable warning” regarding the harms associated with such exposures, as required
15 by Proposition 65.

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

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

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

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

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

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

10 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
11 PRODUCTS exposes consumers to lead through dermal contact and/or ingestion.

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

16 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 consumers in California who were or who would become exposed to lead through dermal
18 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

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

4 **PRAYER FOR RELIEF**

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

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

9 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
10 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
11 offering the PRODUCTS for sale or use in California without first providing a “clear and
12 reasonable warning” in accordance with title 27 of the California Code of Regulations, section
13 25601 *et seq.*, regarding the harms associated with exposures to lead;

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


18 4. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

19 5. That the Court grant such other and further relief as may be just and proper.
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Dated: February 4, 2016

Respectfully Submitted,
THE CHANLER GROUP

By: 

Warren M. Klein
Attorneys for Plaintiff
WHITNEY R. LEEMAN