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FILED

JUN 3 - 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,
Plaintiff,
v.
LEEBER LIMITED U.S.A. and DOES 1-150,
Defendants.

Case No. CIV 1601963

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

(*Cal. Health & Safety Code § 25249.6 et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff SUSAN DAVIA, in the
3 public interest of the citizens of the State of California, to enforce the People’s right to be informed of
4 the presence of Lead, a toxic chemicals found in certain brass-handled copper mugs manufactured,
5 distributed and/or otherwise sold by defendants in California.

6 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
7 California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “No person in the course
8 of doing business shall knowingly and intentionally expose any individual to a chemical known to
9 the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
10 to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

11 3. On February 27, 1987, the State of California identified and listed Lead as a chemical
12 known to cause birth defects and other reproductive harm. Lead became subject to the warning
13 requirement one year later and was therefore subject to the “clear and reasonable warning”
14 requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001 (c); Cal. Health &*
15 *Safety Code § 25249.8.*)

16 4. Lead and Lead Compounds shall hereinafter be referred to, collectively, as the
17 “LISTED CHEMICAL.”

18 5. Significant levels of each LISTED CHEMICAL have been discovered in or on copper
19 or other beverage mug products with brass handles including, but not limited to, Elegance 16 oz.
20 solid copper Moscow Mule mug (90381) that defendants manufacture, distribute, and/or offer for
21 sale to consumers throughout the State of California. All such brass-handled copper and other mug
22 products containing the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

23 6. Defendants’ failure to warn consumers and/or other individuals in the State of
24 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’ sale of
25 the PRODUCTS is a violation of Proposition 65.

26 7. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide employees handling the PRODUCTS
28

1 and purchasers or users of the PRODUCTS with the required warning regarding the health hazards
2 of the LISTED CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

3 8. Plaintiff also seeks civil penalties against defendants for their violations of
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 9. Plaintiff SUSAN DAVIA is a citizen of the State of California who is dedicated to
7 protecting the health of California citizens through the elimination or reduction of toxic exposures
8 from consumer products, and brings this action in the public interest pursuant to California Health
9 & Safety Code Section 25249.7.

10 10. Based upon publicly available information, plaintiff is informed and believes, and
11 thereupon alleges, that defendants Jodhpuri, Inc. and Paper Source, Inc. are each a person doing
12 business within the meaning of California Health & Safety Code Section 25249.11.

13 11. Based upon publicly available information, plaintiff is informed and believes, and
14 thereupon alleges, that defendant LEEBER LIMITED U.S.A. is legally responsible for the
15 manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of California or
16 implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use
17 in the State of California.

18 12. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
19 doing business within the meaning of California Health & Safety Code Section 25249.11.

20 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
21 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
22 engage in the process of research, testing, designing, assembling, fabricating, and/or manufacturing,
23 one or more of the PRODUCTS for sale or use in the State of California.

24 14. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons doing
25 business within the meaning of California Health & Safety Code Section 25249.11.

26 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
27 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in the
28 State of California.

FIRST CAUSE OF ACTION
(Violation of Proposition 65 - Against All Defendants)

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3 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 22, inclusive.

5 24. In passing Proposition 65, the citizens of the State of California expressed their intent
6 through the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986 that they must
7 be “informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

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

13 26. On March 22, 2016, a valid and compliant Proposition 65 60-Day Notice of Violation
14 (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was provided to LEEBER
15 LIMITED U.S.A. and various public enforcement agencies stating that as a result of the
16 DEFENDANTS’ manufacture, distribution and sales of the PRODUCTS, purchasers and users in the
17 State of California are being exposed to LISTED CHEMICAL resulting from the reasonably
18 foreseeable uses of the PRODUCTS, without the individual workers, purchasers and users first
19 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

20 27. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the
21 PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and
22 plaintiff is informed and believes that DEFENDANTS’ manufacture, distribution, and/or offering of
23 the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has
24 continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further
25 alleges and believes that such violations will continue to occur into the future.

26 28. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
27 enforcement agencies have failed to commence and diligently prosecute a cause of action against
28 DEFENDANTS under Proposition 65.

1 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS, contain the LISTED CHEMICAL.

3 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
4 LISTED CHEMICAL.

5 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
6 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
7 25602(b), through dermal contact and/or ingestion and/or inhalation during or as a consequence of
8 the packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
9 well as the reasonably foreseeable use of the PRODUCTS.

10 32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
11 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable
12 use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
13 and/or ingestion and/or inhalation.

14 33. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale or
15 use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

16 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
17 employees, consumers and/or other individuals in the State of California who were or who could
18 become exposed to the LISTED CHEMICAL during the reasonably foreseeable retail receipt, display
19 and organization of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

20 35. Contrary to the express policy and statutory prohibition of Proposition 65, employees
21 and individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion
22 and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by
23 DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer,
24 irreparable harm, for which harm they have no other plain, speedy or adequate remedy at law.

25 36. As a consequence of the above-described acts, DEFENDANTS are liable for a
26 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California
27 Health & Safety Code Section 25249.7(b).

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1 37. As a consequence of the above-described acts, California Health & 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, and each of them, as
6 follows:

7 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b), assess
8 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
9 herein;

10 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
11 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
12 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
13 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
14 CHEMICAL;

15 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

16 4. That the Court grant such other and further relief as may be just and proper.

17 Dated: June 3, 2016

Respectfully submitted,

18 SHEFFER LAW FIRM

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20 By:



21 Gregory M. Sheffer
22 Attorneys for Plaintiff
23 SUSAN DAVIA
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