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5 SUSAN DAVIA

FILED

AUG 22 2016

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Chen, Deputy

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF MARIN  
9 UNLIMITED CIVIL JURISDICTION

10  
11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 OGGI CORPORATION and DOES 1-150,

15 Defendants.

Case No. en

1603015

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 or other beverage mug  
5 products manufactured, 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 shall hereinafter be referred to as the “LISTED CHEMICAL.”

17 **1.1** Significant levels of each LISTED CHEMICAL have been discovered in or on the  
18 OGGI brand copper or other beverage mug products with brass handles including, but not limited  
19 to, 20 oz. Moscow Mule Mug (#9010 and 9007) and 2 oz. Mini Moscow Mule Shot Mugs (#9008),  
20 that defendants manufacture, distribute, and/or offer for sale to consumers throughout the State of  
21 California. All such OGGI brand, brass-handled mug products containing the LISTED CHEMICAL  
22 shall hereinafter be referred to as the “PRODUCTS.”

23 5. 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 6. 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 7. 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 8. 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 9. Based upon publicly available information, plaintiff is informed and believes, and  
11 thereupon alleges, that defendant OGGI CORPORATION is a person doing business within the  
12 meaning of California Health & Safety Code Section 25249.11.

13 10. Based upon publicly available information, plaintiff is informed and believes, and  
14 thereupon alleges, that each defendant OGGI CORPORATION 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 11. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons  
19 doing business within the meaning of California Health & Safety Code Section 25249.11.

20 12. 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 13. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons doing  
25 business within the meaning of California Health & Safety Code Section 25249.11.

26 14. 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.

1 15. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing  
2 business within the meaning of California Health & Safety Code Section 25249.11.

3 16. RETAIL DEFENDANTS offer of the PRODUCTS for sale to individuals in the State of  
4 California.

5 17. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
6 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code  
7 of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that each  
8 of the fictitiously named defendants is responsible for the acts and occurrences herein alleged.  
9 When ascertained, their true names shall be reflected in an amended complaint.

10 18. OGGI CORPORATION, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
11 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
12 hereinafter as “DEFENDANTS”.

13 **VENUE AND JURISDICTION**

14 19. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
15 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,  
16 because one or more instances of wrongful conduct occurred, and continues to occur, in the County  
17 of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this  
18 County with respect to the PRODUCTS.

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

23 21. The California Superior Court has jurisdiction over DEFENDANTS based on  
24 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
25 association that either are citizens of the State of California, have sufficient minimum contacts in the  
26 State of California, or otherwise purposefully avail themselves of the California market.  
27 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
28 courts consistent with traditional notions of fair play and substantial justice.

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

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2  
3       22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
4 Paragraphs 1 through 21, inclusive.

5       23. 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       24. 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       25. On March 22, 2016, a valid and compliant Proposition 65 sixty-day notice of violation  
14 (“60-Day Notice”), together with a valid, requisite Certificate of Merit, was provided to OGGI  
15 CORPORATION 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       26. 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       27. 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           28.     The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
2 California by DEFENDANTS, contain the LISTED CHEMICAL.

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

5           30.     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          31.     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          32.     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          33.     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          34.     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          35.     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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