

1 MIGUEL CUSTODIO, STATE BAR NO. 248744
VINEET DUBEY, STATE BAR NO. 243208
2 CUSTODIO & DUBEY LLP
448 S. Hill St., Suite 612
3 Los Angeles, CA 90013
Telephone: (213) 785-2909
4 Facsimile: (213) 785-2899

5 Attorneys for Plaintiff
ECOLOGICAL ALLIANCE, LLC
6

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 13 2016

Sherril R. Carter, Executive Officer/Clerk
By: Elerieta Robinsen, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF LOS ANGELES

9 UNLIMITED CIVIL JURISDICTION

10 ECOLOGICAL ALLIANCE, LLC, a
California limited liability company,

11 Plaintiffs,

12 vs.

13 DRAGONMARTS COMPANY LIMITED, a
14 Hong Kong Company; and DOES 1 through
15 10, inclusive,

16 Defendants.
17
18
19
20

CASE NO.: BC628397

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is brought by plaintiff ECOLOGICAL ALLIANCE, LLC
3 (“Plaintiff”) in the public interest of the People of the State of California to enforce their right to
4 be informed of the presence of chemicals listed by the State of California, pursuant to the Safe
5 Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code
6 section 25249.6 *et seq.* (“Proposition 65”), including Lead.

7 2. Plaintiffs seek to remedy Defendants’ failure to warn citizens of the State of
8 California, in violation of Proposition 65, about the presence of Lead (“Listed Chemical”) in
9 Defendant’s Padlocks offered for sale throughout the State of California (“Products”).

10 3. Defendant’s Products contain the Listed Chemical and consumers of Products in
11 the State of California are exposed to the Listed Chemical through dermal exposure and
12 ingestion of Products.

13 4. Defendants know and intend that their Products expose consumers in the State of
14 California to the Listed Chemical.

15 5. Attached hereto and incorporated by reference are copies of a letter (“60-Day
16 Notice”), dated March 24, 2016, which Plaintiff sent to California’s Attorney General. Identical
17 letters were sent to every District Attorney in the state, to the City Attorneys of every California
18 city with a population greater than 750,000, and to all Defendants. Attached to the 60-Day
19 Notices were Certificates of Merit attesting to the reasonable and meritorious basis for this
20 action, Certificates of Service attesting to service of the letters on each entity described above,
21 and a description of Proposition 65 prepared by the California Office of Environmental Health
22 Hazard Assessment. Furthermore, factual information sufficient to establish the basis of the
23 Certificates of Merit was enclosed with the 60-Day Notice sent to California’s Attorney
24 General.

25 6. After receiving the claims asserted in the 60-Day Notice, the public enforcement
26 agencies identified in Paragraph 5 have failed to commence and diligently prosecute a cause of
27 action against Defendants under Proposition 65.

1 7. Plaintiff seeks preliminary and permanent injunctive relief to compel Defendants
2 to provide the warning required under Proposition 65 regarding the Products.

3 8. Pursuant to Health and Safety Code section 25249.7(b), Plaintiff also seeks civil
4 penalties against Defendants for violations of Proposition 65.

5 **PARTIES**

6 9. Plaintiff is a California limited liability company. It brings this action in the
7 public interest pursuant to Health and Safety Code section 25249.7(d).

8 10. The Defendant is a “Person” in the course of doing business within the meaning
9 of Health and Safety Code section 25249.11(a) – “Person” means an individual, trust, firm, joint
10 stock company, corporation, company, partnership, limited liability company, and association.”

11 11. The Defendant is a Hong Kong incorporated company that manufactures,
12 distributes, and/or offers for sale, Products that contain the Listed Chemical. Chan King is a
13 Director and Beneficiary Owner of the company.

14 12. Defendants DOES 1-10, which manufacture, distribute, offer for sale, sell, and/or
15 serve in the State of California Products that contain the Listed Chemical, are each persons in
16 the course of doing business within the meaning of Health and Safety Code section 25249.11.
17 At this time, the true names and capacities of defendants DOES 1 through 10, inclusive, are
18 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
19 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
20 alleges, that each of the fictitiously named defendants is responsible for the acts and
21 occurrences alleged herein. When ascertained, their true names and capacities shall be reflected
22 in an amended complaint.

23 **VENUE AND JURISDICTION**

24 13. The Court has jurisdiction over this action pursuant to Health and Safety Code
25 section 25249.7. Pursuant to California Constitution Article VI, section 10, the California
26 Superior Court has “original jurisdiction in all causes except those given by statute to other trial
27 courts.” The statute under which this action is brought does not specify any other trial courts
28 that should have jurisdiction.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. The Court has jurisdiction over Defendants based on Plaintiff's information and good faith belief that each Defendant is a person, firm, corporation, or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. Defendants' purposeful availment renders the exercise of personal jurisdiction by the Court consistent with traditional notions of fair play and substantial justice.

15. Venue is proper in this Court because Defendants manufacture, distribute, offer for sale, sell, and/or serve Products that contain the Listed Chemical. Liability for Plaintiff's causes of action, or some parts thereof, has accordingly arisen during the times relevant to this Complaint and Plaintiff accordingly seeks civil penalties and forfeitures imposed by statutes.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

16. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 15, inclusive.

17. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-described acts, Defendants are liable for a violation of Proposition 65.

PRAYER FOR RELIEF


Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin Defendants from manufacturing, distributing, offering for sale, selling, and/or serving in the State of California Products that contain the Listed Chemical without first providing a "clear and reasonable warning" under Proposition 65;
2. That the Court grant Plaintiff's reasonable attorneys' fees and costs of suit;
3. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against Defendants in such amount as the Court deems appropriate; and
4. That the Court grant such other and further relief as may be just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: October 12, 2016

Respectfully Submitted,
CUSTODIO & DUBEY LLP

By: 

Vineet Dubey
Custodio & Dubey LLP
Attorneys for Plaintiff
ECOLOGICAL ALLIANCE, LLC

1 (PROOF OF SERVICE BY MAIL – 1031a, 2015.5 C.C.P.)

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am over the age of 18 years, not a party to the within entitled action; my business
4 address is 448 S. Hill St., Suite 612, Los Angeles, CA 90013.

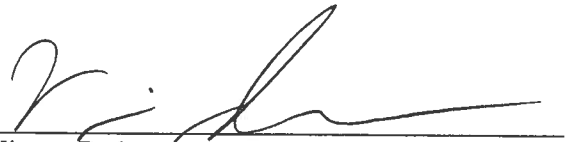
5 I served the foregoing FIRST AMENDED COMPLAINT by placing a true copy thereof
6 for collection and mailing, in accordance with the ordinary business practice of Custodio &
7 Dubey LLP, located at 448 S. Hill St., Suite 612, Los Angeles, CA 90013, on October 12, 2016,
8 enclosed in a sealed envelope, with postage fully prepaid addressed as follows:

9 Ivan Posey, Esq.
10 LEECHTISHMAN
11 100 Corson Street, Suite 300
12 Pasadena, CA 91103

13 I am readily familiar with our office’s practice of collection and processing of
14 correspondence for mailing; it is our practice to deposit correspondence with the United States
15 Postal Service on the same day it is submitted for mailing.

16 I declare under penalty of perjury that under the laws of the State of California that the
17 foregoing is true and correct.

18 October 12, 2016

19 
20 Vineet Dubey

21
22
23
24
25
26
27
28