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ELECTRONICALLY
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*Superior Court of California,
County of San Francisco*
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Deputy Clerk

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 R.C. BIGELOW, INC.; PRINCE OF PEACE
20 ENTERPRISES, INC.; TEANCE FINE TEAS; THE
21 HAIN CELESTIAL GROUP, INC.; WALONG
22 MARKETING, INC. and DOES 1 – 150, inclusive,

23 Defendants.

Case No. CGC-16-555322

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

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

1 NATURE OF THE ACTION

2 1. This Third Amended Complaint is a representative action brought by plaintiff
3 WHITNEY R. LEEMAN, PH.D. in the public interest of the citizens of the State of California
4 to enforce the People’s right to be informed of the health hazards caused by exposures to lead, a
5 toxic chemical found in teas sold by defendants in California.

6 2. By this Third Amended Complaint, plaintiff seeks to remedy defendants’
7 continuing failure to warn individuals not covered by California’s Occupational Safety Health
8 Act, Labor Code section 6300 et seq., who purchase and consume defendants’ products, about
9 the risks of exposure to lead present in teas manufactured, distributed, and offered for sale
10 throughout the State of California. Individuals not covered by California’s Occupational Safety
11 Health Act, Labor Code section 6300 et seq., who purchase defendants’ products, are referred to
12 hereinafter as “consumers.”

13 3. Detectable levels of lead are found in teas that defendants manufacture, distribute,
14 and offer for sale to consumers throughout the State of California.

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

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

25 6. Defendants manufacture, distribute, import, sell, and offer for sale tea containing
26 lead as follows:

27 6.1 Defendant R.C. Bigelow, Inc. manufactures, distributes, imports, sells, and
28 offers for sale without health hazard warnings in California, teas (including herbal and/or

1 non-herbal) that contain and expose consumers to lead, including but not limited to
2 *Bigelow Oolong Tea Classic, UPC #0 72310 00199 2.*

3 6.2 Defendant Prince of Peace Enterprises, Inc. manufactures, distributes,
4 imports, sells, and offers for sale without health hazard warnings in California, dried teas
5 (loose leaf and bagged) that contain and expose consumers to lead. Plaintiff, at this time,
6 specifically limits her allegations in this regard to the *Prince of Peace Premium Oolong*
7 *Tea, UPC #0 39278 15100 8.*

8 6.3 Defendant Teance Fine Teas manufactures, distributes, imports, sells,
9 and/or offers for sale without health hazard warnings in California, dried teas (loose leaf
10 and bagged) that contain and expose consumers to lead. Plaintiff, at this time,
11 specifically limits her allegations in this regard to the *Teance Fine Teas Lapsang*
12 *Souchong Wild Forged Spring 2016.*

13 6.4 Defendant The Hain Celestial Group, Inc. manufactures, distributes,
14 imports, sells, and offers for sale without health hazard warnings in California, teas
15 (including herbal and/or non-herbal) that contain and expose consumers to lead, including
16 but not limited to *Celestial Organics Fair Trade Certified Organic Oolong Tea, #53470-*
17 *000, UPC #0 70734 53468 3.*

18 6.5 Defendants Walong Marketing, Inc. manufactures, distributes, imports,
19 sells, and offers for sale without health hazard warnings in California, dried teas (loose
20 leaf and bagged) that contain and expose consumers to lead, including but not limited to
21 *Asian Taste Dong Ding Oolong Tea, UPC #6 73367 64217 8.*

22 7. All such teas containing lead, as identified more specifically in paragraphs 6.1
23 through 6.5 above, shall be referred to collectively hereinafter as the “PRODUCTS.” As to
24 each specific defendant, however, PRODUCTS shall refer and be limited only to those specific
25 products listed for each specific defendant in paragraphs 6.1 through 6.5 above.

26 8. Defendants’ failure to warn consumers in the State of California of the health
27 hazards associated with exposures to lead in conjunction with defendants’ sales of the
28 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to

1 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
2 § 25249.7(a) & (b)(1).

3 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
4 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with
5 the required warning regarding the health hazards associated with exposures to lead. Health &
6 Safety Code § 25249.7(a).

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

9 PARTIES

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

14 12. Defendant R.C. BIGELOW, INC. ("R.C. BIGELOW") is a person in the course
15 of doing business within the meaning of Health and Safety Code sections 25249.6 and
16 25249.11.

17 13. R.C. BIGELOW manufactures, imports, distributes, sells, and/or offers the
18 PRODUCTS for sale in the State of California, or implies by its conduct that it manufactures,
19 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of
20 California.

21 14. Defendant PRINCE OF PEACE ENTERPRISES, INC. ("PRINCE OF PEACE")
22 is a person in the course of doing business within the meaning of Health and Safety Code
23 sections 25249.6 and 25249.11.

24 15. PRINCE OF PEACE manufactures, imports, distributes, sells, and/or offers the
25 PRODUCTS for sale in the State of California, or implies by its conduct that it manufactures,
26 imports, distributes, sells, and/or offers the PRODUCTS for sale in the State of California.

27 16. Defendant TEANCE FINE TEAS ("TEANCE") is a person in the course of doing
28 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

1 17. TEANCE manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale in the State of California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale in the State of California.

4 18. Defendant THE HAIN CELESTIAL GROUP, INC. (“HAIN CELESTIAL”) is a
5 person in the course of doing business within the meaning of Health and Safety Code sections
6 25249.6 and 25249.11.

7 19. HAIN CELESTIAL manufactures, imports, distributes, sells, and/or offers the
8 PRODUCTS for sale in the State of California, or implies by its conduct that it manufactures,
9 imports, distributes, sells, and/or offers the PRODUCTS for sale in the State of California.

10 20. Defendant WALONG MARKETING, INC. (“WALONG”) is a person in the
11 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
12 25249.11.

13 21. WALONG manufactures, imports, distributes, sells, and/or offers the PRODUCTS
14 for sale in the State of California, or implies by its conduct that it manufactures, imports,
15 distributes, sells, and/or offers the PRODUCTS for sale in the State of California.

16 22. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
17 person in the course of doing business within the meaning of Health and Safety Code sections
18 25249.6 and 25249.11.

19 23. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
20 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
21 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
22 sale in California.

23 24. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
24 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
25 and 25249.11.

26 25. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
27 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
28 retailers for sale in the State of California, or each implies by its conduct that it distributes,

1 exchanges, transfers, processes, and transports one or more of the PRODUCTS to individuals,
2 businesses, or retailers for sale in the State of California.

3 26. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
4 the course of doing business within the meaning of Health and Safety Code sections 25249.6
5 and 25249.11.

6 27. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
7 consumers and other individuals in the State of California.

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

13 29. R.C. BIGELOW, PRINCE OF PEACE, TEANCE, HAIN CELESTIAL,
14 WALONG, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and
15 RETAILER DEFENDANTS shall hereinafter be referred to collectively as the
16 “DEFENDANTS.”

17 **VENUE AND JURISDICTION**

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

24 31. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, section 10, which grants the Superior Court “original
26 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
27 which this action is brought does not specify any other basis of subject matter jurisdiction.
28

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

7 **FIRST CAUSE OF ACTION**

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

9 33. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 32, inclusive.

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

15 35. Proposition 65 states, "[n]o person in the course of doing business shall
16 knowingly and intentionally expose any individual to a chemical known to the state to cause
17 cancer or reproductive toxicity without first giving clear and reasonable warning to such
18 individual" Health & Safety Code § 25249.6.

19 36. On December 28, 2016 and November 20, 2017, plaintiff served sixty-day notices
20 of violation, together with the accompanying certificates of merit, on R.C. BIGELOW, the
21 California Attorney General's Office, and all other requisite public enforcement agencies
22 alleging that, as a result of R.C. BIGELOW'S sales of the PRODUCTS, consumers in the State
23 of California are being exposed to lead resulting from their reasonably foreseeable use of the
24 PRODUCTS, without the consumers first receiving a "clear and reasonable warning" regarding
25 the harms associated with exposures to lead, as required by Proposition 65.

26 37. On August 19, 2016, plaintiff served a sixty-day notice of violation, together with
27 the accompanying certificate of merit, on PRINCE OF PEACE, the California Attorney
28 General's Office, and all other requisite public enforcement agencies alleging that, as a result of

1 PRINCE OF PEACE’S sales of the PRODUCTS, consumers in the State of California are being
2 exposed to lead resulting from their reasonably foreseeable consumption of the PRODUCTS,
3 without the consumers first receiving a “clear and reasonable warning” regarding the harms
4 associated with exposures to lead, as required by Proposition 65.

5 38. On August 19, 2016, plaintiff served a sixty-day notice of violation, together with
6 the accompanying certificate of merit, on TEANCE, the California Attorney General’s Office,
7 and all other requisite public enforcement agencies alleging that, as a result of TEANCE’S sales
8 of the PRODUCTS, consumers in the State of California are being exposed to lead resulting
9 from their reasonably foreseeable consumption of the PRODUCTS, without the consumers first
10 receiving a “clear and reasonable warning” regarding the harms associated with exposures to
11 lead, as required by Proposition 65.

12 39. On August 19, 2016 and November 21, 2017, plaintiff served sixty-day notices of
13 violation, together with the accompanying certificates of merit, on HAIN CELESTIAL, the
14 California Attorney General’s Office, and all other requisite public enforcement agencies
15 alleging that, as a result of HAIN CELESTIAL’S sales of the PRODUCTS, consumers in the
16 State of California are being exposed to lead resulting from their reasonably foreseeable
17 consumption of the PRODUCTS, without the consumers first receiving a “clear and reasonable
18 warning” regarding the harms associated with exposures to lead, as required by Proposition 65.

19 40. On August 19, 2016, plaintiff served a sixty-day notice of violation, together with
20 the accompanying certificate of merit, on WALONG the California Attorney General’s Office,
21 and all other requisite public enforcement agencies alleging that, as a result of WALONG’S
22 sales of the PRODUCTS, consumers in the State of California are being exposed to lead
23 resulting from their reasonably foreseeable consumption of the PRODUCTS, without the
24 consumers first receiving a “clear and reasonable warning” regarding the harms associated with
25 exposures to lead, as required by Proposition 65.

26 41. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
27 for sale in violation of Health and Safety Code section 25249.6, and DEFENDANTS’ violations
28 have continued beyond their receipt of plaintiff’s sixty-day notices of violation. As such,

1 DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined, will
2 continue in the future.

3 42. After receiving plaintiff's sixty-day notices of violation, no public enforcer has
4 commenced and diligently prosecuted a cause of action against any of the DEFENDANTS
5 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notices.

6 43. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
7 offer for sale in California cause exposures to lead as a result of the reasonably foreseeable
8 consumption of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
9 consumers and other individuals in California are not exempt from the "clear and reasonable"
10 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

11 44. DEFENDANTS knew or should have known that the PRODUCTS they
12 manufacture, import, distribute, sell, and offer for sale in California contain lead.

13 45. Lead is present in or on the PRODUCTS in such a way that consumers are
14 exposed to lead through dermal contact and/or ingestion during the reasonably foreseeable
15 preparation and consumption of the PRODUCTS.

16 46. The normal and reasonably foreseeable preparation and consumption of the
17 PRODUCTS has caused, and continues to cause, consumer exposures to lead, as such exposures
18 are defined by title 27 of the California Code of Regulations section 25602(b).

19 47. DEFENDANTS know that the normal and reasonably foreseeable preparation and
20 consumption of the PRODUCTS exposes individuals to lead through dermal contact and/or
21 ingestion.

22 48. DEFENDANTS intend that exposures to lead from the reasonably foreseeable
23 preparation and consumption of the PRODUCTS will occur by their deliberate, non-accidental
24 participation in the manufacture, importation, distribution, sale, and offering of the PRODUCTS
25 for sale to consumers in California.

26 49. DEFENDANTS failed to provide a "clear and reasonable warning" to those
27 consumers and other individuals in California who have been, or who will be, exposed to lead
28

1 through dermal contact and/or ingestion resulting from their preparation and/or consumption of
2 the PRODUCTS.

3 50. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
4 directly by California voters, consumers and other individuals exposed to lead through dermal
5 contact and/or ingestion as a result of their consumption of the PRODUCTS that
6 DEFENDANTS sell without a “clear and reasonable” health hazard warning, have suffered, and
7 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at
8 law.

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

12 52. As a consequence of the above-described acts, Health and Safety Code
13 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
14 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 consumption in California without first providing a “clear
9 and reasonable warning” regarding the harms associated with exposures to lead in accordance
10 with title 27 of the California Code of Regulations section 25601 *et seq.*;
- 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 title 27 California Code of Regulations section 25601 *et seq.*;
- 15 4. That the Court grant plaintiff her 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
18 Dated: April 11, 2018

Respectfully submitted,

19 THE CHANLER GROUP

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21 By: 

22 Josh Voorhees
23 Attorneys for Plaintiff
24 WHITNEY R. LEEMAN, PH.D.
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