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FILED
San Francisco County Superior Court

JUL 17 2017

CLERK OF THE COURT
BY: [Signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

CGC 17-560176

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

R.C. BIGELOW, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. _____
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 et seq.)

BY FAX

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by plaintiff Whitney R. Leeman,
3 Ph.D. in the public interest of the citizens of the State of California to enforce the People's right to
4 be informed of the health hazards caused by exposures to lead, a toxic chemical found in packaged
5 dried oolong teas sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
7 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,
8 who purchase and consume defendants' products, about the risks of exposure to lead present in and
9 on the packaged dried oolong teas that defendants manufacture, distribute and offer for sale or
10 consumption throughout the State of California. Individuals not covered by California's
11 Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase and consume defendants'
12 products, are referred to hereinafter as "consumers."

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

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

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

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
25 hazard warnings in California, packaged dried oolong teas containing lead including, but not limited
26 to, *Bigelow Oolong Tea Classic*, UPC#0 72310 00199 2. All such packaged dried oolong teas
27 containing lead are referred to collectively hereinafter as "PRODUCTS."

28

1 future.

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

5 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
6 for sale or consumption in California cause exposures to lead as a result of the reasonably
7 foreseeable consumption of the PRODUCTS. Such exposures caused by DEFENDANTS and
8 endured by consumers and other individuals in California are not exempt from the "clear and
9 reasonable" warning requirements of Proposition 65.

10 31. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
11 distribute, sell, and offer for sale in California contain lead.

12 32. Lead is present in or on the PRODUCTS in such a way as to expose consumers
13 through ingestion during reasonably foreseeable consumption.

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

17 34. DEFENDANTS know that the normal and reasonably foreseeable consumption of the
18 PRODUCTS exposes individuals to lead through ingestion.

19 35. DEFENDANTS intend exposures to lead from the reasonably foreseeable
20 consumption of the PRODUCTS will occur by their deliberate, non-accidental participation in the
21 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale to consumers
22 in California.

23
24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
25 in California who have been, or will be, exposed to lead through ingestion resulting from their
26 consumption of the PRODUCTS.

27 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
28 directly by California voters, consumers exposed to lead through ingestion as a result of their

1 consumption of the PRODUCTS that DEFENDANTS sell without a "clear and reasonable" health
2 hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain,
3 speedy, or adequate remedy at law.

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

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

9 **PRAYER FOR RELIEF**

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

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

13 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
14 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
15 for sale or consumption in California without a "clear and reasonable warning" in accordance with
16 title 27 of the California Code of Regulations, section 25601 et seq., regarding the harms associated
17 with exposures to lead;

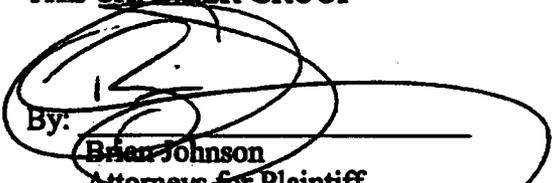
18 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary
19 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
20 chain of commerce in California without a "clear and reasonable warning" as defined by California
21 Code of Regulations title 27, section 25601 et seq.;

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

23 5. That the Court grant such other and further relief as may be just and proper.

24 Dated: July 17, 2017

Respectfully submitted,
THE CHANLER GROUP

25
26
27 By: 

Brian Johnson
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.