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ENDORSED
FILED
San Francisco County Superior Court

SEP 28 2017

CLERK OF THE COURT
BY: NEYL WEBB
Deputy Clerk

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

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
EASTERN TEA CORPORATION; and DOES
1-150, inclusive,
Defendants.

Case No. CGC-17-561612

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 et seq.)

1 NATURE OF THE ACTION

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 dried teas
5 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 dried teas that defendants manufacture, distribute and offer for sale or consumption
10 throughout the State of California. Individuals not covered by California's Occupational Safety
11 Health Act, Labor Code § 6300 et seq., who purchase and consume defendants' products, are
12 referred to hereinafter as "consumers."

13 3. Detectable levels of lead are found in and on the dried teas that defendants
14 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, dried teas containing lead including, but not limited to, *Best Yet*
26 *Green Tea*, UPC #0 42187 30248 5. All such dried teas containing lead are referred to collectively
27 hereinafter as "PRODUCTS."
28

1 7. Defendants' failure to warn consumers in the State of California of the health hazards
2 associated with exposures to lead in conjunction with defendants' sales of the PRODUCTS are
3 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such
4 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

11 PARTIES

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

16 11. Defendant EASTERN TEA CORPORATION (EASTERN) is a person in the course of
17 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

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

21 13. Defendants DOES 1-50 (MANUFACTURER DEFENDANT) are each a person in the
22 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

23 14. MANUFACTURER DEFENDANTS, and each of them, grow, manufacture, produce
24 or package, or each implies by its conduct that it grows, manufactures, produces or packages one or
25 more of the PRODUCTS offered for sale or use in California.

26 15. Defendants DOES 51-100 (DISTRIBUTOR DEFENDANTS) are each a person in the
27 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
28

1 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,
2 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale
3 or use in the State of California, or each implies by its conduct that it distributes, exchanges,
4 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or
5 retailers for sale or use in the State of California.

6 17. Defendants DOES 101-150 (RETAILER DEFENDANTS) are each a person in the
7 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

8 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
9 individuals in the State of California.

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

15 20. EASTERN, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
16 and RETAILER DEFENDANTS are hereinafter referred to collectively as "DEFENDANTS."

17 **VENUE AND JURISDICTION**

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

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

28 23. The California Superior Court has jurisdiction over DEFENDANTS based on

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

6 **FIRST CAUSE OF ACTION**

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

8 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
9 1 through 23, inclusive.

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

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

17 27. On April 27, 2017, plaintiff served a sixty-day notice of violation and accompanying
18 certificate of merit on EASTERN, the California Attorney General, and all other requisite public
19 enforcers alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers and
20 other individuals in the State of California are being exposed to lead resulting from their reasonably
21 foreseeable consumption of the PRODUCTS, without these consumers and other individuals first
22 receiving a "clear and reasonable warning" regarding the harms associated with exposures to lead as
23 required by Proposition 65.

24 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
25 sale or consumption in violation of Health and Safety Code § 25249.6, and DEFENDANTS'
26 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation. As such,
27 DEFENDANTS' violations are ongoing and continuous and, unless enjoined, will continue in the
28 future.

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

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

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

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

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

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

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

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

25 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, consumers exposed to lead through ingestion as a result of their
27 consumption of the PRODUCTS that DEFENDANTS sell without a "clear and reasonable" health
28 hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain,

1 speedy, or adequate remedy at law.

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

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

7 **PRAYER FOR RELIEF**

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

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

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

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

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

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

22 Dated: September 26, 2017

Respectfully submitted,
THE CHANLER GROUP

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25 By: 

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