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FILED

San Francisco County Superior Court

SEP 26 2017

CLERK OF THE COURT

BY: 

Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION

11
12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 CREATIVE CO-OP, INC.,

16 Defendant.
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Case No.

CGC - 17 - 561544

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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6. Defendant manufactures, distributes, imports, sells, and offers for sale without health hazard warnings in California, (a) ceramic jars with exterior decorations, such as decals, including, but not limited to, *Creative Co-Op 3"H Ceramic Jars w Bamboo Lid & Floral Decal Black/White, Item #DA6027, UPC #8 07472 89954 1*, and (b) juice glasses/votive holders with exterior decorations, such as decals, that contain lead including, but not limited to, *Creative Co-Op 4"H Glass Juice Glass/Votive Holders w Decal, 4 Styles, Item #DA4914A, UPC #8 07472 82975 3*. All such ceramic jars with exterior decorations, such as decals, and juice glasses/votive holders with exterior decorations, such as decals, containing lead are referred to collectively hereinafter as "PRODUCTS."

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

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

9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties against defendant for its violations of Proposition 65.

PARTIES

10. Plaintiff LAURENCE VINOCUR is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products; and he brings this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11. Defendant CREATIVE CO-OP, INC. (“CREATIVE CO-OP”) is a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

12. CREATIVE CO-OP manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

13. CREATIVE CO-OP shall hereinafter, where appropriate, be referred to as the “DEFENDANT.”

VENUE AND JURISDICTION

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

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

16. The California Superior Court has jurisdiction over DEFENDANT based on Plaintiff's information and good faith belief that 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. DEFENDANT'S purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

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

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1 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed
3 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

4 19. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
5 and intentionally expose any individual to a chemical known to the state to cause cancer or
6 reproductive toxicity without first giving clear and reasonable warning to such individual”
7 Health & Safety Code § 25249.6.

8 20. On June 29, 2017, Plaintiff served a sixty-day notice of violation, together with the
9 accompanying certificate of merit, on CREATIVE CO-OP, California Attorney General’s Office,
10 and the requisite public enforcement agencies alleging that, as a result of DEFENDANT’S sales of
11 the PRODUCTS, consumers in the State of California are being exposed to lead resulting from their
12 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear and
13 reasonable warning” regarding the harms associated with exposures to lead as required by
14 Proposition 65.

15 21. DEFENDANT manufactures, imports, distributes, sells, and offers the PRODUCTS
16 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANT’S violations
17 have continued beyond its receipt of Plaintiff’s sixty-day notice of violation. As such,
18 DEFENDANT’S violations are ongoing and continuous in nature and, unless enjoined, will
19 continue in the future.

20 22. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement agency
21 has commenced and diligently prosecuted a cause of action against DEFENDANT under
22 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of violation.

23 23. The PRODUCTS that DEFENDANT manufactures, imports, distributes, sells, and
24 offers for sale or use in California cause exposures to lead as a result of the reasonably foreseeable
25 use of the PRODUCTS. Such exposures caused by DEFENDANT and endured by consumers in
26 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65,
27 yet DEFENDANT provides no clear & reasonable warning.

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1 24. DEFENDANT knew or should have known that the PRODUCTS it manufactures,
2 imports, distributes, sells, and offers for sale in California contain lead.

3 25. Lead is present in or on the PRODUCTS in such a way as to expose consumers
4 through dermal contact and/or ingestion during reasonably foreseeable use.

5 26. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
6 continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of
7 Regulations, section 25602(b).

8 27. DEFENDANT knows that the normal and reasonably foreseeable use of the
9 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

10 28. DEFENDANT intends that exposures to lead from the reasonably foreseeable use of
11 the PRODUCTS will occur by its deliberate, non-accidental participation in the manufacture,
12 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
13 California.

14 29. DEFENDANT failed to provide a "clear and reasonable warning" to those consumers
15 in California who have been, or who will be, exposed to lead through dermal contact and/or
16 ingestion resulting from their use of the PRODUCTS.

17 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
18 directly by California voters, consumers exposed to lead through dermal contact and/or ingestion as
19 a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable"
20 health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have
21 no plain, speedy, or adequate remedy at law.

22 31. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
23 described acts, DEFENDANTS is liable for a maximum civil penalty of \$2,500 per day for each
24 violation.

25 32. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
26 also specifically authorizes the Court to grant injunctive relief against DEFENDANT.

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

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

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

THE CHANLER GROUP

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