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Josh Voorhees, State Bar No. 241436
Christopher Tuttle, State Bar No. 264545
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Telephone: (510) 848-8880
Facsimile: (510) 848-8118
ctuttle@chanler.com

Attorneys for Plaintiff
PETER ENGLANDER

ENDORSED
FILED
Superior Court of California
County of San Francisco

FEB 13 2018

CLERK OF THE COURT
BY: MEREDITH GRIER
Deputy Clerk

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

CGC-18-564204

PETER ENGLANDER,

Plaintiff,

v.

KURT S. ADLER, INC.; and DOES 1
- 150, inclusive,

Defendant.

Case No. _____

**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 Peter Englander in the
3 public interest of the citizens of the State of California to enforce the People's right to be informed
4 of the health hazards caused by exposures to lead, a toxic chemical found in and on Christmas
5 stockings sold by defendant in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
7 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 et seq.,
8 who purchase, use or handle defendant's products, about the risks of exposure to lead present in and
9 on the Christmas stockings, manufactured, imported, distributed, sold and offered for sale or use
10 throughout the State of California. Individuals not covered by California's Occupational Safety
11 Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendant's products, are
12 referred to hereinafter as "consumers."

13 3. Detectable levels of lead are found in and on the Christmas stockings, that defendant
14 manufactures, imports, distributes, sells, and offers for sale to consumers in the State of 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
18 to 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 identified and listed lead
21 as a chemical known to cause birth defects (and other reproductive harm). Lead became subject to
22 the warning requirement one year later and was therefore subject to the "clear and reasonable
23 warning" requirements of Proposition 65, beginning on February 27, 1988. Cal. Code Regs. tit. 27,
24 § 27001 (c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendant manufactures, distributes, imports, sells, and offers for sale without health
26 hazard warnings in California, Christmas stockings containing lead including, but not limited to, the
27 *Elf Christmas Stocking, EF7141, UPC #086131 27503 6*. All such Christmas stockings containing
28 lead are referred to collectively hereinafter as "PRODUCTS."

1 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
2 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and
3 25249.11.

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

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
10 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
11 25249.11.

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

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

19 20. ADLER, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
20 and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as
21 the “DEFENDANTS.”

VENUE AND JURISDICTION

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

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

5 23. The California Superior Court has jurisdiction over DEFENDANT based on
6 Plaintiff’s information and good faith belief that DEFENDANT is a person, firm, corporation or
7 association that is a citizen of the State of California, has sufficient minimum contacts in the State
8 of California, and/or otherwise purposefully avails itself of the California market. DEFENDANT’S
9 purposeful availment renders the exercise of personal jurisdiction by California courts consistent
10 with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**

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

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

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

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

22 27. On August 1, 2017, Plaintiff served a sixty-day notice of violation, together with the
23 accompanying certificate of merit, on ADLER, California Attorney General’s Office, and the
24 requisite public enforcement agencies alleging that, as a result of DEFENDANT’S sales of the
25 PRODUCTS, consumers in the State of California are being exposed to lead resulting from their
26 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear and
27 reasonable warning” regarding the harms associated with exposures to lead as required by
28 Proposition 65.

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

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

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

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

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

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

21 34. DEFENDANT knows that the normal and reasonably foreseeable use of the
22 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

23 35. DEFENDANT intends that exposures to lead from the reasonably foreseeable use of
24 the PRODUCTS will occur by its deliberate, non-accidental participation in the manufacture,
25 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
26 California.

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1 36. DEFENDANT failed to provide a “clear and reasonable warning” to those consumers
2 in California who have been, or who will be, exposed to lead through dermal contact and/or
3 ingestion resulting from their use of the PRODUCTS.

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

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

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

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff prays for judgment against DEFENDANT as follows:

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

19 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
20 permanently enjoin DEFENDANT from manufacturing, distributing, or offering the PRODUCTS
21 for sale or use in California without first providing a “clear and reasonable warning” in accordance
22 with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms
23 associated with exposures to lead;

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


28 4. That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

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

Dated: February 9, 2018

Respectfully submitted,
THE CHANLER GROUP

By: 

Christopher Tuttle
Attorneys for Plaintiff
PETER ENGLANDER