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PETER ENGLANDER

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

CGC - 17 - 562367

PETER ENGLANDER,  
  
Plaintiff,  
  
v.  
  
WOOLRICH, INC.; and DOES 1 -  
150, inclusive,  
  
Defendant.

Case No. \_\_\_\_\_  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
  
(Health & Safety Code § 25249.5 et seq.)

**FILED**  
San Francisco County Superior Court  
NOV 08 2017  
CLERK OF THE COURT  
BY: *Merrill Gove*  
Deputy Clerk

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 the glasses with  
5 exterior designs, 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 glasses with exterior designs, manufactured, imported, distributed, sold and offered for sale  
10 or use throughout the State of California. Individuals not covered by California’s Occupational  
11 Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendant’s products,  
12 are referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found in and on the glasses with exterior designs, that  
14 defendant manufactures, imports, distributes, sells, and offers for sale to consumers in the State of  
15 California.

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

21 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed lead  
22 as a chemical known to cause birth defects (and other reproductive harm). Lead became subject to  
23 the warning requirement one year later and was therefore subject to the “clear and reasonable  
24 warning” requirements of Proposition 65, beginning on February 27, 1988. Cal. Code Regs. tit. 27,  
25 § 27001 (c); Health & Safety Code §§ 25249.8 & 25249.10(b).

1 6. Defendant manufactures, distributes, imports, sells, and offers for sale without health  
2 hazard warnings in California, glasses with exterior designs including, but not limited to, *Dogfish*  
3 *Pint Glasses, A-22023-NC, UPC #7 28175 55541 4*. All such glasses with exterior designs  
4 containing lead are referred to collectively hereinafter as "PRODUCTS."

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

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

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

15 **PARTIES**

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

20 11. Defendant WOOLRICH, INC. ("WOOLRICH") is a person in the course of doing  
21 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

22 12. WOOLRICH manufactures, imports, distributes, sells, and/or offers the PRODUCTS  
23 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
24 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.  
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1           13.       Defendants DOES 1-50 (“MANUFACTURER 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           14.       MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
5 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,  
6 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in  
7 California.

8           15.       Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
9 the course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
10 25249.11.

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

16          17.       Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the  
17 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
18 25249.11.

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

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

1 20. WOOLRICH, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
2 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred to  
3 collectively as the “DEFENDANTS.”

4 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 **PRAYER FOR RELIEF**

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

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

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

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

15 4. That the Court grant Plaintiff his 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 Dated: November 6, 2017

Respectfully submitted,

18 THE CHANLER GROUP

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21 By: 

22 Christopher Tuttle  
23 Attorneys for Plaintiff  
24 PETER ENGLANDER  
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