

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Attorneys for Plaintiff
PETER ENGLANDER

E-FILED

2017 DEC -5 AM 9:27

CLERK OF THE COURT
SANTA CLARA COUNTY
G. REYES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

PETER ENGLANDER,

Plaintiff,

v.

KIRKLAND'S, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. **17CV320045**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

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 glass
5 canisters with exterior designs 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, use or handle defendants’ products, about the risks of exposure to lead present in and
9 on the glass canisters with exterior designs that defendants manufacture, distribute and offer 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 defendants’ products, are
12 referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found on the glass canisters with exterior designs that
14 defendants manufacture, distribute, and offer for sale to consumers throughout 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 to
19 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 listed lead as a chemical
22 known to cause birth defects or reproductive harm. Lead became subject to the “clear and
23 reasonable warning” requirements of the act one year later on February 27, 1988. Cal. Code Regs.
24 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
26 hazard warnings in California, glass canisters with exterior designs containing lead including, but
27 not limited to, *Homestead Living Canister Glass, SKU# 26-157062*. All such glass canisters with
28 exterior designs containing lead are referred to collectively hereinafter as “PRODUCTS.”

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

16 11. Defendant KIRKLAND'S, INC. ("KIRKLAND'S") is a person in the course of doing
17 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

18 12. KIRKLAND'S manufactures, imports, distributes, sells, and/or offers the PRODUCTS
19 for 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 DEFENDANTS") are each a person in
22 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
23 25249.11.

24 14. MANUFACTURER DEFENDANTS, and each of them; research, test, design,
25 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
26 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in
27 California.

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 §§ 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,
7 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or
8 retailers for 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 §§ 25249.6 and 25249.11.

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

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

18 20. KIRKLAND’S, MANUFACTURER DEFENDANTS, DISTRIBUTOR
19 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred
20 to collectively as the “DEFENDANTS.”

21 **VENUE AND JURISDICTION**

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

1 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
2 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
3 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, DEFENDANTS'
4 violations are ongoing and continuous and, unless enjoined, will continue in the future.

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

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

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

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

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

19 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
20 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

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

25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
26 in California who have been, or will be, exposed to lead through dermal contact and/or ingestion
27 resulting from their use of the PRODUCTS.
28

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

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

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

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

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

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

24 \\\

25 \\\

26 \\\

27 \\\

28 \\\

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: December 5, 2017

Respectfully submitted,
THE CHANLER GROUP

By: 
Josh Voorhees
Attorneys for Plaintiff
PETER ENGLANDER