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FILED

DEC - 1 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: V. Johanson, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

MARIN COUNTY

UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 HARBOUR SERVICES, INC.; and DOES 1 –
17 15, inclusive,

18 Defendants.

Case No. CJ

1704446

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5)

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6. Defendants manufacture, distribute, import, sell, and offer for sale without health hazard warnings in California, drinking glasses with exterior decorations that contain lead

1 including, but not limited to, *The Crow's Nest Pint Glass*. All such glasses with exterior
2 decorations containing lead are referred to hereinafter as the "PRODUCTS."

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

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

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

14 PARTIES

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

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

22 12. HARBOUR SERVICES manufactures, imports, distributes, sells, and offers the
23 PRODUCTS for sale in California, or it implies by its conduct that it manufactures, imports,
24 distributes, sells, and offers the PRODUCTS for sale in California.

25 13. Defendants DOES 1-5 ("MANUFACTURER DEFENDANTS") are each a
26 person in the course of doing business within the meaning of Health and Safety Code sections
27 25249.6 and 25249.11.

1 14. Each of the MANUFACTURER DEFENDANTS research, test, design, assemble,
2 fabricate, and manufacture the PRODUCTS, or they imply by their conduct that they research,
3 test, design, assemble, fabricate, and manufacture one or more of the PRODUCTS offered for
4 sale to consumers in California.

5 15. Defendants DOES 6-10 ("DISTRIBUTOR DEFENDANTS") are each a person in
6 the course of doing business within the meaning of Health and Safety Code sections 25249.6
7 and 25249.11.

8 16. Each of the DISTRIBUTOR DEFENDANTS distribute, exchange, transfer,
9 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for
10 sale to consumers in California, or each implies by its conduct that it distributes, exchanges,
11 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses,
12 or retailers for sale to consumers in California.

13 17. Defendants DOES 11-15 ("RETAILER DEFENDANTS") are each a person in
14 the course of doing business within the meaning of Health and Safety Code sections 25249.6
15 and 25249.11.

16 18. Each of the RETAILER DEFENDANTS offer the PRODUCTS for sale to
17 consumers and other individuals in California.

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

23 20. HARBOUR SERVICES, MANUFACTURER DEFENDANTS, DISTRIBUTOR
24 DEFENDANTS, and RETAILER DEFENDANTS are referred to collectively hereinafter as
25 "DEFENDANTS."

1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
5 wrongful conduct occurred, and continue to occur, in this county, and/or because
6 DEFENDANTS conduct, business in Marin County with respect to the PRODUCTS.

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

11 23. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff's information and good faith belief that DEFENDANTS are each a person, firm,
13 corporation or association that is a citizen of the State of California, has sufficient minimum
14 contacts in the State of California, or otherwise purposefully avails itself of the California
15 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
16 California courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

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

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

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

3 27. On September 12, 2017, Plaintiff served a sixty-day notice of violation, together
4 with the accompanying certificate of merit, on HARBOUR SERVICES, the California Attorney
5 General, and the requisite public enforcement agencies alleging that, as a result of
6 DEFENDANTS’ sales of the PRODUCTS, consumers and other individuals in California are
7 being exposed to lead resulting from their reasonably foreseeable use of the PRODUCTS,
8 without these consumers and other individuals first receiving a “clear and reasonable warning”
9 regarding the harms associated with exposures to lead, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
13 such, DEFENDANTS’ violations are ongoing and continuous and, unless enjoined will continue
14 in the future. DEFENDANTS violations, as alleged herein have been ongoing since at least
15 September 12, 2014.

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

20 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
21 offer for sale or use in California cause exposures to lead as a result of the reasonably
22 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
23 consumers in California are not exempt from the “clear and reasonable” warning requirements
24 of Proposition 65, yet DEFENDANTS provide no warning.

25 31. DEFENDANTS knew or should have known that the PRODUCTS they
26 manufacture, import, distribute, sell, and offer 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. DEFENDANTS know that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

8 35. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use
9 of the PRODUCTS will occur by their deliberate, non-accidental participation in the
10 manufacture, import, distribution, sale, and offering of the PRODUCTS for sale to consumers in
11 California.

12 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
13 consumers and other individuals in California who have been, or who will be, exposed to lead
14 through dermal contact and/or 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 and other individuals exposed to lead through dermal
17 contact and/or ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell
18 without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer,
19 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

1 **PRAYER FOR RELIEF**

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

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

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

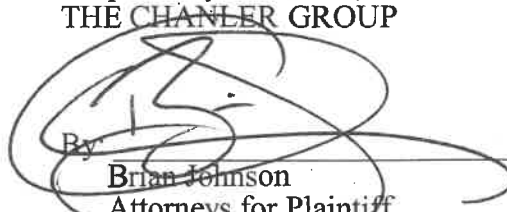
11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a "clear and reasonable warning" as
14 defined by California Code of Regulations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

15 4. That the Court grant plaintiff her 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.

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18 Dated: November 30, 2017

Respectfully submitted,
THE CHANLER GROUP

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21 By 
22 Brian Johnson
23 Attorneys for Plaintiff
24 JOHN MOORE
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