

FILED

DEC 20 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

1 Clifford A. Chanler, State Bar No. 135534
2 Brian Johnson, State Bar No. 235965
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 cliff@chanler.com
10 brian@chanler.com

11 Attorneys for Plaintiff
12 JOHN MOORE

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 MARIN COUNTY
15 UNLIMITED CIVIL JURISDICTION

16 JOHN MOORE,

17 Plaintiff,

18 v.

19 HARBOUR SERVICES, INC.; CROW'S
20 NEST RESTAURANT; and DOES 1 – 15,
21 inclusive,

22 Defendants.

Case No. CV1704446

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.5)

1 NATURE OF THE ACTION

2 1. This First Amended Complaint is a representative action brought by plaintiff
3 JOHN MOORE in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to lead, a toxic
5 chemical that is found in and on the exterior designs of drinking glasses sold by defendants in
6 California.

7 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’
8 continuing failure to warn individuals not covered by California’s Occupational Safety Health
9 Act, Labor Code section 6300 et seq., who purchase, use or handle defendants’ products, about
10 the risks of exposures to lead present in and on the exterior decorations of drinking glasses
11 manufactured, distributed, and offered for sale or use in California. Individuals not covered by
12 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
13 use or handle Defendants’ products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of lead are found in and on the exterior decorations of drinking
15 glasses that defendants manufacture, distribute, sell, and offer for sale to consumers throughout
16 California.

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

22 5. Pursuant to Proposition 65, on February 27, 1987, the State of California listed
23 lead as a chemical known to cause birth defects or other reproductive harm. Lead became
24 subject to the “clear and reasonable warning” requirements of the act one year later on February
25 27, 1988. Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 13. Defendant CROW'S NEST RESTAURANT ("CROW'S NEST") is a person in
2 the course of doing business within the meaning of Health and Safety Code sections 25249.6
3 and 25249.11.

4 14. CROWS NEST manufactures, imports, distributes, sells, and offers the
5 PRODUCTS for sale in California, or it implies by its conduct that it manufactures, imports,
6 distributes, sells, and offers the PRODUCTS for sale in California.

7 15. Defendants DOES 1-5 ("MANUFACTURER DEFENDANTS") are each a
8 person in the course of doing business within the meaning of Health and Safety Code sections
9 25249.6 and 25249.11.

10 16. Each of the MANUFACTURER DEFENDANTS research, test, design, assemble,
11 fabricate, and manufacture the PRODUCTS, or they imply by their conduct that they research,
12 test, design, assemble, fabricate, and manufacture one or more of the PRODUCTS offered for
13 sale to consumers in California.

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

17 18. Each of the DISTRIBUTOR DEFENDANTS distribute, exchange, transfer,
18 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for
19 sale to consumers in California, or each implies by its conduct that it distributes, exchanges,
20 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses,
21 or retailers for sale to consumers in California.

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

25 20. Each of the RETAILER DEFENDANTS offer the PRODUCTS for sale to
26 consumers and other individuals in California.

27 21. At this time, the true names of defendants DOES 1 through 15, inclusive, are
28

1 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
2 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
3 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
4 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

5 22. HARBOUR SERVICES, CROW'S NEST, MANUFACTURER DEFENDANTS,
6 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are referred to collectively
7 hereinafter as "DEFENDANTS."

8 VENUE AND JURISDICTION

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

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

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

24 FIRST CAUSE OF ACTION

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

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 Paragraphs 1 through 25, inclusive.
28

1 27. 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
3 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
4 harm.”

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

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

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

23 31. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
24 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
25 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of
26 violation.

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

6 33. DEFENDANTS knew or should have known that the PRODUCTS they
7 manufacture, import, distribute, sell, and offer for sale in California contain lead.

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

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

13 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
14 PRODUCTS exposes individuals to lead through dermal contact and/or ingestion.

15 37. DEFENDANTS intend that exposures to lead from the reasonably foreseeable use
16 of the PRODUCTS will occur by their deliberate, non-accidental participation in the
17 manufacture, import, distribution, sale, and offering of the PRODUCTS for sale to consumers in
18 California.

19 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
20 consumers and other individuals in California who have been, or who will be, exposed to lead
21 through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

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

