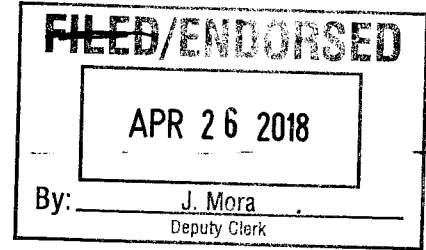


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JOHN MOORE



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

ANCIENT GRAFFITI, INC., and DOES 1-150,
inclusive,

Defendants.

Case No. **34-2018-00231892**

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

13 3. Detectable levels of Lead are found in and on the glass rain gauges with exterior
14 designs that defendants manufacture, import, distribute, sell, and offer for sale, directly and
15 indirectly, to consumers throughout the State of 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
22 Lead as a chemical known to cause birth defects (and other reproductive harm). Lead became
23 subject to the warning requirement one year later and was therefore subject to the “clear and
24 reasonable warning” requirements of Proposition 65, beginning on February 27, 1988. Cal. Code
25 Regs. tit. 27, § 27001 (c); Health & Safety Code §§ 25249.8 & 25249.10(b).

26 6. Defendants manufacture, import, distribute, import, sell, and offer for sale without
27 health hazard warnings in California glass rain gauges with exterior designs containing Lead
28 including, but not limited to, *Ancient Graffiti Cast Brass Staked Rain Gauge, Turtle, AG-1171,*

1 *UPC #6 38071 77770* 7. All such glass rain gauges with exterior designs are referred to
2 collectively hereinafter as “PRODUCTS.”

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

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

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

13 **PARTIES**

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

18 11. Defendant ANCIENT GRAFFITI, INC. (“ANCIENT GRAFFITI”) is a person in the
19 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

20 12. ANCIENT GRAFFITI manufactures, imports, distributes, sells, and/or offers the
21 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
22 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

23 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person
24 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

25 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and
26 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and
27 manufacture one or more of the PRODUCTS offered for sale or use in the state of California.

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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 section 25249.11.

3 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
4 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in
5 the state of California.

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

8 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the state
9 of California.

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

15 20. ANCIENT GRAFFITI, MANUFACTURER DEFENDANTS, DISTRIBUTOR
16 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred
17 to as the “DEFENDANTS.”

18 **VENUE AND JURISDICTION**

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

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

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

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

9 31. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
10 import, distribute, sell, and offer for sale in California contain Lead.

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

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

16 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
17 PRODUCTS exposes individuals to Lead through dermal contact and/or ingestion.

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

22 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
23 consumers in California who have been, or who will be, exposed to Lead through dermal contact
24 and/or ingestion resulting from their use of the PRODUCTS.

25 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
26 directly by California voters, consumers exposed to Lead through dermal contact and/or ingestion
27 as a result of their use of the PRODUCTS that DEFENDANTS sold without a “clear and
28 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for

1 which they have no plain, speedy, or adequate remedy at law.

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

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

7 **PRAAYER FOR RELIEF**

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

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

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

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


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

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

23 Dated: April 26, 2018

Respectfully submitted,

24 THE CHANLER GROUP

25
26
27 By: 
Laralei Paras
Attorneys for Plaintiff
JOHN MOORE