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ENDORSED  
FILED  
San Francisco County Superior Court  
SEP 21 2018  
CLERK OF THE COURT  
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Deputy Clerk

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

CGC-18-570016

LAURENCE VINOCUR,

Plaintiff,

v.

NICOLE BRAYDEN GIFTS, LLC;  
DIVINITY BOUTIQUE, LLC; OAK PATCH  
GIFTS LLC; and DOES 1-150, inclusive,

Defendants.

Case No. \_\_\_\_\_

**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 Laurence Vinocur  
3 in the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to lead, a toxic chemical found in and on  
5 the beverageware with exterior designs sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code §  
8 6300 *et seq.*, who purchase, use or handle defendants’ products, about the risks of exposure to  
9 lead present in and on the beverageware with exterior designs that are manufactured, imported,  
10 sold or distributed for sale or use throughout the State of California. Individuals not covered by  
11 California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*, who purchase, use or  
12 handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found in and on the beverageware with exterior  
14 designs that defendants manufacture, import, sell or distribute for sale to consumers throughout  
15 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  
18 doing business shall knowingly and intentionally expose any individual to a chemical known to  
19 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
20 warning to such 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.  
25 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).

26 6. Defendants manufacture, import, sell and distribute for sale, without health hazard  
27 warnings in California, beverageware with exterior designs containing lead, including, but not  
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1 limited to, the *Laid Back Retired State Shot Glass, UPC #7 41464 10459 9*, referred to,  
2 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) and 25249.7(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 § 25249.7(b), Plaintiff also seeks civil  
13 penalties against defendants for their violations of Proposition 65.

14 **PARTIES**

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

19 11. Defendant NICOLE BRAYDEN GIFTS, LLC (“NICOLE BRAYDEN”) is a  
20 person in the course of doing business within the meaning of Health and Safety Code §§  
21 25249.6 and 25249.11.

22 12. NICOLE BRAYDEN manufactures, imports, distributes, sells, and/or offers the  
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
24 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
25 State of California.

1           13. Defendant DIVINITY BOUTIQUE, LLC (“DIVINITY BOUTIQUE”) is a person  
2 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
3 25249.11.

4           14. DIVINITY BOUTIQUE manufactures, imports, distributes, sells, and/or offers the  
5 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
7 State of California.

8           15. Defendant OAK PATCH GIFTS LLC (“OAK PATCH GIFTS”) is a person in the  
9 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
10 25249.11.

11           16. OAK PATCH GIFTS manufactures, imports, distributes, sells, and/or offers the  
12 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
13 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
14 State of California.

15           17. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
16 person in the course of doing business within the meaning of Health and Safety Code §§  
17 25249.6 and 25249.11.

18           18. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
19 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,  
20 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for  
21 sale or use in California.

22           19. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
23 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
24 25249.11.

25           20. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,  
26 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or  
27 retailers for sale or use in the State of California, or each implies by its conduct that it  
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1 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to  
2 individuals, businesses, or retailers for sale or use in the State of California.

3 21. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
4 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
5 25249.11.

6 22. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
7 individuals in the State of California.

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

13 24. NICOLE BRAYDEN, DIVINITY BOUTIQUE, OAK PATCH GIFTS,  
14 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER  
15 DEFENDANTS shall hereinafter, where appropriate, be referred to collectively as the  
16 “DEFENDANTS.”

17 **VENUE AND JURISDICTION**

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

24 26. The California Superior Court has jurisdiction over this action, pursuant to  
25 California Constitution Article VI, section 10, which grants the Superior Court “original  
26 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
27 which this action is brought does not specify any other basis of subject matter jurisdiction.  
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1 and the requisite public enforcement agencies, alleging that, in addition to NICOLE BRAYDEN  
2 AND DIVINITY BOUTIQUE, OAK PATCH GIFTS' sales of the PRODUCTS expose  
3 consumers in the State of California to lead, resulting from consumers' reasonably foreseeable  
4 use of the PRODUCTS, without consumers first receiving a "clear and reasonable warning"  
5 regarding the harms associated with exposures to lead, as required by Proposition 65.

6 33. DEFENDANTS manufacture, import, sell and distribute the PRODUCTS for sale  
7 or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have  
8 continued beyond their receipt of plaintiff's sixty-day notice of violation. As such,  
9 DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined, will  
10 continue in the future.

11 34. After receiving plaintiff's sixty-day notice of violation and supplemental sixty-  
12 day notice of violation, no public enforcement agency has commenced and diligently prosecuted  
13 a cause of action against DEFENDANTS under Proposition 65 to enforce the alleged violations  
14 that are the subject of Plaintiff's notice of violation.

15 35. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
16 offer for sale or use in California cause exposures to lead as a result of the reasonably  
17 foreseeable use of the PRODUCTS. Such exposures, caused by DEFENDANTS and endured  
18 by consumers in California, are not exempt from the "clear and reasonable" warning  
19 requirements of Proposition 65, yet DEFENDANTS provide no clear and reasonable warning.

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

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

24 38. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
25 continues to cause, consumer product exposures to lead, as defined by title 27 of the California  
26 Code of Regulations, section 25600.1(e).

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1 PRODUCTS for sale or use in California without first providing a “clear and reasonable  
2 warning” in accordance with title 27 of the California Code of Regulations, § 25600 et seq.,  
3 regarding the harms associated with exposures to lead;

4 3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue  
5 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
6 currently in the chain of commerce in California without a “clear and reasonable warning” as  
7 defined by California Code of Regulations title 27, § 25600 et seq.;

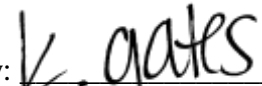
8 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

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12 Dated: September \_\_, 2018

Respectfully submitted,

THE CHANLER GROUP

14 By:   
15 Kimberly Gates  
16 Attorneys for Plaintiff  
17 LAURENCE VINOCUR