

E-FILED
11/5/2021 7:03 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV390631
Reviewed By: R. Cachux

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

12
13 AUDREY DONALDSON,
14 Plaintiff,
15 v.
16 UNEMPLOYED PHILOSOPHERS, INC.;
17 POTPOURRI GROUP, INC.; and DOES 1-
18 150, inclusive,
19 Defendants.

21CV390631
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 AUDREY
3 DONALDSON in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the health hazards caused by exposures to Lead (“Lead”), a toxic chemical
5 found in shot glasses 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 the
9 shot glasses with exterior designs that defendants manufacture, distribute and offer for sale or use
10 throughout the State of California. Individuals not covered by California’s Occupational Safety
11 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 in the shot glasses 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 and other 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, shot glasses with exterior designs containing Lead including, but not
27 limited to, the *Mug Shots 6 Arresting Shotglasses; UPC: 8 14229 00690 9*.

1 15. POTPOURRI manufactures, imports, distributes, sells, and/or offers the PRODUCTS
2 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4 16. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person in
5 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
6 25249.11.

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

11 18. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
12 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
13 25249.11.

14 19. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,
15 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale
16 or use in the State of California, or each implies by its conduct that it distributes, exchanges,
17 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or
18 retailers for sale or use in the State of California.

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

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

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

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

5 30. On March 26, 2021, Plaintiff served a sixty-day notice of violation, together with the
6 accompanying certificate of merit, on UNEMPLOYED PHILOSOPHER, POTPOURRI, the
7 California Attorney General, and all other requisite public enforcers alleging that, as a result of
8 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being exposed
9 to Lead resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers
10 first receiving a “clear and reasonable warning” regarding the harms associated with exposures to
11 Lead as required by Proposition 65.

12 31. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
13 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
14 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’
15 violations are ongoing and continuous and, unless enjoined, will continue in the future.

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

19 33. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
20 for sale or use in California cause exposures to Lead as a result of the reasonably foreseeable use of
21 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
22 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

23 34. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
24 distribute, sell, and offer for sale in California contain Lead.

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

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for sale or use in California without a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with exposures to Lead;


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

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: November 4, 2021

Respectfully submitted,
VOORHEES & BAILEY, LLP

By: 
Troy Bailey
Attorneys for Plaintiff
AUDREY DONALDSON