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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

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Clerk of the Court
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CGC-22-600976

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 LAURENCE VINOCUR,

17 Plaintiff,

18 v.

19 OVERSTOCK.COM, INC.,

20 Defendant.

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 in
3 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 solder wire
5 and lead ingots/bars sold by defendant that are purchased by or shipped to citizens in California
6 (the "Products").

7 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
8 consumers and businesses not covered by California's Occupational Safety Health Act, Labor
9 Code §§6300 *et seq.* about the risks of exposure to lead present in certain solder wire and lead
10 ingots/bars that are manufactured, distributed, and offered for sale or use throughout the State of
11 California. Individuals, consumers and businesses not covered by California's Occupational
12 Safety Health Act, Labor Code §§6300 *et seq.* who purchase, use or handle the Products are
13 referred to hereinafter as "consumers."

14 3. Lead is found in solder wire and lead ingots/bars that defendant manufactures,
15 imports, distributes, retails or otherwise markets or offers for sale to consumers and other citizens
16 throughout California. Defendant has actual knowledge of the Products' lead contents. Most, if
17 not all, of the sales of the Products were and continue to be offered for purchase and/or transacted
18 through overstock.com.

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

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

6. Defendant manufactures, imports, distributes, and/or offers for sale or use in California, without the mandated health hazard warnings, various products (hereinafter, "the Products") consisting of solder wire and lead ingots/bars that reference the toxicant "lead" or its elemental symbol, "Pb" in: (i) the product's name; (ii) the product description or information referenced prominently near the online display for the item when sold through an e-commerce platform; (iii) the search "filter," if any, used to market the products online; (iv) the immediate product packaging or container; or (v) any other conspicuous manner likely to be encountered without considerable effort by an online purchaser before payment. Some examples of the Products were identified in the sixty-day notices of violation sent to defendant.

7. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposures to lead in conjunction with defendant's sales of the Products are violations of Proposition 65 which subject defendant, to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code §25249.7(a) and (b)(1).

8. For defendant's violations and threatened violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendant to provide purchasers and users of the Products with the required warning regarding specific health hazards associated with exposures to lead. Health & Safety Code §25249.7(a).

9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties against defendant for their violations of Proposition 65, some of which are ongoing.

PARTIES

10. Plaintiff Laurence Vinocur is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer and industrial products, and he brings this action in the public interest pursuant to Health & Safety Code §25249.7(d).

11. Defendant Overstock.com, Inc. (Overstock) is a person in the course of doing business within the meaning of Health & Safety Code §§25249.6 and 25249.11.

12. Overstock imports, distributes, sells, facilitates, and/or offers the Products for sale or use in the State of California, or implies by its conduct that it imports, distributes, facilitates for sale, sells, and/or offers the Products for sale or use in the State of California. Overstock has offered (and, in many instances, continues to offer) for sale Products supplied to it by entities that are not subject to enforcement under Proposition 65 because: (i) they have fewer than ten employees during all relevant periods; or (ii) do not have an agent for process of service in California. Further, in some instances, the Products are shipped to California consumers, either directly (or indirectly through an Overstock fulfillment center in the United States) by exporters located in foreign countries without offices in the United States, after purchase at overstock.com.

13. Overstock may be referred to hereinafter as the “defendant.”

VENUE AND JURISDICTION

14. Venue is proper in the Superior Court for the County of San Francisco pursuant to Code of Civil Procedure §§393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against defendant, one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or defendant conducted, and continue to conduct business in San Francisco.

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

16. The California Superior Court has jurisdiction over defendant based on plaintiff's information and good faith belief that defendant is a person, firm, corporation has a principal office or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. defendant's purposeful availment renders the exercise of personal jurisdiction (specific, limited or both) by California courts consistent with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

3 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 16, inclusive.

5 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed
7 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

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

12 20. On April 8, 2022, plaintiff served two 60-Day Notices of Violation (the Notices),
13 together with the requisite certificates of merit, on Overstock, the California Attorney General’s
14 Office, and the requisite public enforcement agencies alleging that, as a result of defendant’s sales
15 of the Products, consumers in California are being exposed to lead resulting from their reasonably
16 foreseeable use of the Products, without them first receiving a “clear and reasonable warning”
17 regarding the reproductive and developmental harms associated with such exposures, as required
18 by Proposition 65. The Notices are limited to solder wire and lead ingots/bars containing lead that
19 reference the toxicant “lead” in: (i) the product’s name; (ii) the product description or information
20 referenced prominently near the online display for the item; (iii) the search “filter,” if any, used to
21 market the products online; (iv) the product packaging or container; or (v) in any other
22 conspicuous manner likely to be read by the online purchaser before payment without
23 considerable effort (actual knowledge limitation).

24 21. Defendant manufactures, imports, distributes, facilitates for sale, sells, and/or offers
25 the Products for sale or use in violation of Health & Safety Code §25249.6, and defendant’s
26 violations have continued well beyond their receipt of plaintiff’s Notices. As such, defendant’s
27 violations are ongoing and continuous in nature and, unless enjoined will continue in the future
28

1 without any information or written answers that they will cease and desist until compliance is
2 ensured.

3 22. After receiving plaintiff's Notices, no public enforcement agency has commenced
4 and diligently prosecuted a cause of action against defendant under Proposition 65 to enforce the
5 alleged violations that are the subject of plaintiff's Notices.

6 23. The Products that defendant's manufactures, imports, distributes, or offers for sale
7 throughout the State of California cause exposures to lead as a result of the reasonably foreseeable
8 use of the Products. Such exposures caused by defendant and endured by consumers in California
9 who purchase, use or handle the Products are not exempt from the "clear and reasonable" warning
10 requirements of Proposition 65, yet defendant does not provide compliant warnings for the
11 reproductive toxicity of lead.

12 24. Defendant has actual knowledge that the Products they manufacture, import,
13 distribute, sell, facilitate for sale or offer for sale in California contain lead.

14 25. Lead is present in or on the Products in such a way as to expose consumers through
15 inhalation, dermal contact and/or ingestion during reasonably foreseeable use.

16 26. The normal and reasonably foreseeable use of the Products has caused, and
17 continues to cause, consumer product exposures to lead as defined by 27 California Code of
18 Regulations §25600.1(e) and other types of exposures set forth in the Notices.

19 27. Defendant knows that the normal and reasonably foreseeable use of the Products
20 exposes individuals to lead through inhalation, dermal contact and/or ingestion.

21 28. Defendant intends that exposures to lead from the reasonably foreseeable use of the
22 Products will occur by their deliberate, non-accidental participation in the manufacture,
23 importation, distribution, sale, and offering of the Products for sale or use to consumers and others
24 in California.

25 29. Defendant failed to provide a "clear and reasonable warning" to those consumers
26 and other citizens in California who have been, or who will be, exposed to lead through
27 inhalation, dermal contact and/or ingestion resulting from their use of the Products.
28

1 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
2 directly by California voters, consumers exposed to lead, through inhalation, dermal contact
3 and/or ingestion as a result of their use of the Products that defendant sold without a “clear and
4 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for
5 which they have no plain, speedy, or adequate remedy at law.

6 31. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-
7 described acts, defendant, and each of them, are liable for a maximum civil penalty of \$2,500 per
8 day for each violation.

9 32. As a consequence of the above-described acts, Health & Safety Code §25249.7(a)
10 also specifically authorizes the Court to grant injunctive relief against defendant.

11 **PRAYER FOR RELIEF**

12 Wherefore, plaintiff prays for judgment against defendant as follows:

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

15 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
16 permanently enjoin defendant from manufacturing, importing, distributing, or offering the
17 Products for sale or use in California without first providing a “clear and reasonable warning”
18 regarding the harms associated with exposures to lead;

19 3. That the Court, pursuant to Health & Safety Code §25249.7(a), issue preliminary
20 and permanent injunctions mandating that defendant recall all Products currently in the chain of
21 commerce in California without a “clear and reasonable warning” as defined by 27 California
22 Code of Regulations §25600 *et seq.*, and refund purchasers;

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: July 28, 2022

Respectfully submitted,

CHANLER, LLC

By:

Signature _____

Clifford A. Chanler

Attorneys for Plaintiff
LAURENCE VINOCUR