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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 HARVEST GREEN INC.,

15 Defendant.

Case No.: 23CV031505

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

16 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following
17 cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

19 1. Plaintiff brings this representative action on behalf of all California citizens to
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
21 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
22 “[n]o person in the course of doing business shall knowingly and intentionally expose any
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
24 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 hazards caused by exposure to lead, a toxic chemical found in Harvest Green (a) spoon rests and
28 (b) mugs sold and/or distributed by defendant Harvest Green Inc. (“Harvest Green” or
“Defendant”) in California.

1 3. Lead is a harmful chemical known to the State of California to cause cancer and
2 adverse developmental and reproductive effects in both males and females. On October 1, 1992,
3 the state of California listed lead as a chemical known to cause cancer and it has come under the
4 purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health
5 & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State of California listed
6 lead as a chemical known to cause adverse developmental and reproductive effects in both males
7 and females.

8 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
9 within California or sell products therein to comply with Proposition 65 regulations. Included in
10 such regulations is the requirement that businesses must label any product containing a Proposition
11 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
12 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
13 chemical.

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
19 25249.7.

20 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
21 without a requisite exposure warning, Harvest Green (a) spoon rests and (b) mugs (the “Products”)
22 that expose persons to lead when used for their intended purpose.

23 7. Defendant’s failure to warn consumers and other individuals in California of the
24 health hazards associated with exposure to lead in conjunction with the sale and/or distribution of
25 the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
26 penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65
28 in accordance with Health and Safety Code § 25249.7(b).

1 of California, and/or has otherwise purposefully availed itself of the California market. Such
2 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
3 permissible with traditional notions of fair play and substantial justice.

4 STATUTORY BACKGROUND

5 17. The people of the State of California declared in Proposition 65 their right “[t]o be
6 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
7 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

8 18. To effect this goal, Proposition 65 requires that individuals be provided with a
9 “clear and reasonable warning” before being exposed to substances listed by the State of California
10 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

11 No person in the course of doing business shall knowingly and intentionally expose any
12 individual to a chemical known to the state to cause cancer or reproductive toxicity without
13 first giving clear and reasonable warning to such individual...

14 19. An exposure to a chemical in a consumer product is one “which results from a
15 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
16 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
17 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
18 shall provide a warning to any person to whom the product is sold or transferred unless the product
19 is packaged or labeled with a clear and reasonable warning.”

20 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
21 more of the following methods individually or in combination:¹

22 a. A warning that appears on a product’s label or other labeling.

23 b. Identification of the product at the retail outlet in a manner which provides
24 a warning. Identification may be through shelf labeling, signs, menus, or a combination
25 thereof.

26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet
3 with such conspicuousness, as compared with other words, statements, designs, or devices
4 in the label, labeling or display as to render it likely to be read and understood by an
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free
7 information services, or any other system that provides clear and reasonable warnings.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

14 **FACTUAL BACKGROUND**

15 22. On October 1, 1992, the state of California listed lead as a chemical known to cause
16 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
17 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
18 1987, the State of California listed lead as a chemical known to cause adverse developmental and
19 reproductive effects in both males and females. In summary, lead was listed under Proposition 65
20 as a chemical known to the State to cause cancer and adverse developmental and reproductive
21 effects in both males and females.

22 23. The exposures that are the subject of the Notice result from the purchase,
23 acquisition, handling, and recommended use of the Products. Consequently, the primary route of
24 exposure to these chemicals is through ingestion and/or dermal contact. Increased duration of
25 contact, microwaving, increased acidity, and increased food temperatures in contact with the
26 glazed food contact surface will result in increased levels of lead transferred into food. When foods
27 contaminated with lead due to contact with the Products are consumed, lead ingestion will occur
28 which will increase BLLs.

1 continued to knowingly and intentionally expose California users and consumers of the Product to
2 lead without providing required warnings under Proposition 65.

3 41. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, handling and recommended use of the Products. Consequently, the primary route of
5 exposure to these chemicals is through ingestion and/or dermal contact. Increased duration of
6 contact, microwaving, increased acidity, and increased food temperatures in contact with the
7 glazed food contact surface will result in increased levels of lead transferred into food. When foods
8 contaminated with lead due to contact with the Products are consumed, lead ingestion will occur
9 which will increase BLLs.

10 42. Plaintiff, based on her best information and belief, avers that such exposures will
11 continue every day until clear and reasonable warnings are provided to purchasers and users or
12 until this known toxic chemical is removed from the Products.

13 43. Defendant has knowledge that the normal and reasonably foreseeable use of the
14 Products exposes individuals to lead, and Defendant intends that exposures to lead will occur by
15 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
16 Products to consumers in California

17 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
18 Complaint.

19 45. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
20 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

21 46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
22 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
3 relief:

4 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
5 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

7 B. That the court preliminarily and permanently enjoin Defendant mandating
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
10 amount of \$50,000.00.

11 D. That the court grant any further relief as may be just and proper.

12 Dated: April 18, 2023

BRODSKY & SMITH

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