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CENTER FOR ADVANCED PUBLIC AWARENESS

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

08/15/2023
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

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

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

CEDAR BAY ENTERTAINMENT LLC;
TITANIC TENNESSEE, LLC; RHODE
ISLAND NOVELTY, INC.; and DOES 1-30,
inclusive,

Defendants.

Case No. CGC-23-604624

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

Violation of Proposition 65, The Safe Drinking
Water and Toxic Enforcement Act of 1986
(Health & Safety Code § 25249.5 *et seq.*)

Action is an Unlimited Civil Case

1 Plaintiff Center for Advanced Public Awareness (“CAPA”), acting in the public interest,
2 alleges a cause of action against Defendants CEDAR BAY ENTERTAINMENT LLC (“CEDAR
3 BAY”), TITANIC TENNESSEE, LLC (“TITANIC TENNESSEE”), RHODE ISLAND
4 NOVELTY, INC. (“RHODE ISLAND”) and DOES 1-30.

5 **INTRODUCTION AND NATURE OF THE ACTION**

6 1. This Complaint is a representative action brought by CAPA in the public interest of
7 the citizens of the State of California to enforce the People’s right to be informed of the health
8 hazards caused by exposures to the heavy metal, Lead, a toxic chemical alleged herein to be found in
9 ceramic mugs with exterior decoration and shot glasses with exterior decoration manufactured and
10 sold by Defendants to consumers in the State of California.

11 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
12 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
13 (“consumers”) they are being exposed to substances known to the State of California to cause cancer,
14 birth defects and other reproductive harm through exposures to Lead present on ceramic mugs with
15 exterior decoration and shot glasses with exterior decoration produced, manufactured, distributed,
16 marketed, sold and otherwise offered for sale or use throughout the State of California by Defendants
17 and purchased by consumers and other individuals who handle, touch, or otherwise utilize the
18 products, resulting in exposures through dermal absorption and ingestion.

19 3. Detectable levels of Lead are found on the ceramic mugs with exterior decoration and
20 shot glasses with exterior decoration Defendants produce, manufacture, sell or distribute for sale to
21 individuals throughout California.

22 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
23 Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course
24 of doing business to knowingly and intentionally expose consumers in California to chemicals known
25 to the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear
26 and reasonable” health hazard warning to such individuals prior to purchase or use.

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5. CAPA contends and alleges Defendants produce, manufacture, distribute, sell, and offer for sale, in or into California, ceramic mugs with exterior decoration containing Lead including, but not limited to, *Embossed Black Mug, ZS-TITEM (1-100470)*, (the “**CERAMIC MUGS**”) and shot glasses with exterior decoration containing Lead including, but not limited to, *Gold Shot Glass Step & Repeat, GW-TITSRGold (1-100499)*, *PO#:SSF-2021-126, UPC 7 66802 58109 2*, (the “**SHOT GLASSES**”), without the compliant health hazard warning regarding the harms associated with exposures to the chemical required under Proposition 65. Defendants’ conduct subjects them to civil penalties for each violation, enjoinder, and preliminary and permanent injunctive relief. CERAMIC MUGS and SHOT GLASSES are collectively referred to herein as the “**PRODUCTS.**” Health & Safety Code §§ 25249.7(a) and (b).

PARTIES

6. Plaintiff CAPA is a non-profit organization organized under the laws of California, acting in the interest of the general public, dedicated to protecting the health of California citizens and the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and increasing public awareness of those chemicals through the promotion of sound environmental practices and corporate responsibility. CAPA is a person, within the meaning of Health & Safety Code § 25249.11(a), and brings this action in the public interest pursuant to Health & Safety Code § 25249.7(d).

7. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant CEDAR BAY was and is a person in the course of doing business, with ten (10) or more employees, within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

8. CEDAR BAY produces, manufactures, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct it produces, manufactures, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant TITANIC TENNESSEE was and is a person in the course of doing business, with ten (10) or more employees, within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

1 10. TITANIC TENNESSEE produces, manufactures, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or implies by its conduct it produces,
3 manufactures, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of
4 California.

5 11. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
6 RHODE ISLAND was and is a person in the course of doing business, with ten (10) or more
7 employees, within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

8 12. RHODE ISLAND produces, manufactures, distributes, sells, and/or offers the
9 PRODUCTS for sale or use in the State of California, or implies by its conduct it produces,
10 manufactures, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of
11 California.

12 13. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
13 in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and
14 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
15 manufacture, or imply by their conduct they do so, one or more of the PRODUCTS offered for sale or
16 use in California.

17 14. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
18 the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.
19 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or imply by
20 their conduct they do so, one or more of the PRODUCTS to individuals, businesses, or retailers for
21 sale or use in the State of California.

22 15. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
23 course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.
24 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to individuals in the
25 State of California.

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16. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown to plaintiff, who, therefore, sues said DEFENDANTS by their fictitious names, pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged herein and the damages caused thereby. When ascertained, their true names and capacities shall be reflected in an amended complaint.

17. At all times mentioned herein, CEDAR BAY, TITANIC TENNESSEE, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the **“DEFENDANTS.”**

JURISDICTION AND VENUE

18. This Court has jurisdiction over this action pursuant to Health & Safety Code § 25249.7, allowing enforcement by any court of competent jurisdiction. 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.

19. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief DEFENDANTS are each a person, firm, corporation or association that is a citizen of the State of California, does sufficient business in California, have sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail themselves of the California market through their manufacture, importation, distribution, promotion, marketing or sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

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1 20. Venue is proper in the Superior Court for the County of San Francisco pursuant to
2 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
3 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
4 instances of wrongful conduct occurred, and continue to occur, in this city and county, and/or because
5 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
6 respect to the PRODUCTS that are the subject of this action.

7 **REGULATORY BACKGROUND AND LAW**

8 21. In 1986, the people of the State of California approved an initiative addressing
9 concerns regarding the harms caused by hazardous chemicals and declaring their right “[t]o be
10 informed about exposures the chemicals that cause cancer, birth defects, or other reproductive harm.”
11 Ballot Pamp., Proposed General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

12 22. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
13 codified at Health & Safety Code §§ 25249.6 *et seq.*, Proposition 65 states in relevant part “[n]o
14 person in the course of doing business shall knowingly and intentionally expose any individual to a
15 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
16 warning to such individual...”

17 23. Under the Act, a “person the course of doing business” is defined as a business with
18 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
19 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” health
20 hazard warning. Health & Safety Code § 25249.6

21 24. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
22 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
23 § 25102(i). A consumer product exposure to a hazardous chemical is an exposure that “results from a
24 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
25 product...” 27 CCR § 25600.1(e).

26 25. Proposition 65 provides persons violating the statute may be enjoined in any court of
27 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day per violation.
28 Health & Safety Code § 25249.7.

26. On February 27, 1987, pursuant to Proposition 65, California identified and listed Lead as a chemical known to cause birth defects and reproductive harm. Lead became subject to the “clear and reasonable warning” requirements one year later, on February 27, 1988. On October 1, 1992, pursuant to Proposition 65’s implementing regulations, California identified and listed Lead as a chemical known to the State cause cancer. Lead became subject to the “clear and reasonable warning” requirements for cancer one year later, on October 1, 1993. California Code of Regulations (“**CCR**”), tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

STATEMENT OF FACTS

27. Plaintiff purchased the PRODUCTS, without a “clear and reasonable” warning, in California.

28. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, and consulted with a person with relevant and appropriate knowledge and expertise, who, after reviewing the collected data and analyzing the risk of exposure to Lead, determined the PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.

29. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting there was a reasonable and meritorious case for this private action and included the factual information supporting the certificate when it served notice on the California Attorney General's Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

30. Thereafter, on July 8, 2022, plaintiff served a 60-Day Notice of Violation (“**Notice**”), together with the certificate of merit, on CEDAR BAY, TITANIC TENNESSEE, the California Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales of the CERAMIC MUGS, consumers in the State of California were, and are, being exposed to Lead through their reasonably foreseeable use of the CERAMIC MUGS as intended without first receiving a “clear and reasonable warning,” as required by Proposition 65.

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31. Subsequently, on May 22, 2023, plaintiff served a 60-Day Notice of Violation (“**Supplemental Notice**”), together with the certificate of merit, on RHODE ISLAND, CEDAR BAY, TITANIC TENNESSEE, the California Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and are, being exposed to Lead through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a “clear and reasonable warning,” as required by Proposition 65. The Notice and Supplemental Notice are collectively referred to hereinafter as the “**Notices.**”

32. After receiving plaintiff's Notices, no public enforcement agency has commenced and is diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of the Notice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All DEFENDANTS)

33. CAPA realleges and incorporates by reference, as if fully stated herein, the allegations set forth in Paragraphs 1 through 32, inclusive.

34. DEFENDANTS' PRODUCTS contain Lead in levels requiring a "clear and reasonable" warning under Proposition 65.

35. DEFENDANTS knew or should have known the PRODUCTS they produce, manufacture, distribute, sell, and offer for sale in California contain Lead.

36. The PRODUCTS DEFENDANTS produce, manufacture, distribute, sell, and offer for sale or use in California cause exposures to Lead through dermal absorption and ingestion, as a result of the reasonably foreseeable use of the PRODUCTS.

37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and continues to cause, exposures to Lead.

38. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS exposes individuals to Lead through dermal absorption and ingestion.

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1 39. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the
2 PRODUCTS will occur by their deliberate, non-accidental participation in the California
3 marketplace.

4 40. The exposures to Lead, caused by DEFENDANTS and endured by consumers and
5 other individuals in California, are not exempt from the “clear and reasonable” warning requirements
6 of Proposition 65.

7 41. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
8 and other individuals in California who have been, or will be, exposed to Lead through dermal
9 absorption and ingestion resulting from their use of the PRODUCTS as intended.

10 42. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
11 directly by California voters, consumers and other individuals exposed to Lead through dermal
12 absorption and ingestion as a result of their use of the PRODUCTS DEFENDANTS sold without a
13 “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm
14 for which they have no plain, speedy, or adequate remedy at law.

15 43. DEFENDANTS produce, manufacture, distribute, sell, and offer the PRODUCTS for
16 sale or use in violation of Health & Safety Code § 25249.6, and DEFENDANTS’ violations have
17 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are
18 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

22 45. As a consequence of the above-described acts, Health & Safety Code § 25249.7(a)
23 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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1 **PRAYER FOR RELIEF**

2 Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them,
3 as follows:

4 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
5 permanently enjoin DEFENDANTS from producing, manufacturing, distributing, marketing or
6 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
7 reasonable warning” regarding the harms associated with exposures to Lead or reformulating the
8 PRODUCTS to remove Lead;

9 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), issue preliminary and
10 permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of
11 commerce in California without a “clear and reasonable warning”;

12 3. That the Court, assess civil penalties against DEFENDANTS, and each of them, in the
13 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;


14 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
15 herein; and

16 5. That the Court grant any further relief as the Court may deem just and equitable.

17 Dated: August 15, 2023

Respectfully submitted,

18 SEVEN HILLS LLP

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20 By: 
21 Laralei S. Paras
22 Attorneys for Plaintiff
23 *Center for Advanced Public Awareness*
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