

1 Christopher M. Martin, State Bar No. 186021
2 Josh Voorhees, State Bar No. 241436
3 Stephen E. Cohen, State Bar No. 284416
4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
8 Telephone: (510) 848-8880
9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff
11 LAURENCE VINOUCUR

FILED

APR 28 2015

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF MARIN

14 UNLIMITED CIVIL JURISDICTION

15 LAURENCE VINOUCUR,

16 Plaintiff.

17 v.

18 ROSS ACQUISITION CO.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. CV 1501550

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code. § 25249.6 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, LAURENCE
3 VINOCUR, in the public interest of the citizens of the State of California, to enforce the
4 People's right to be informed of the presence of lead, a toxic chemical found in mugs with
5 exterior designs sold in the State of California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
7 warn California citizens about reproductive toxicity associated with their exposure to lead
8 present in or on mugs with exterior designs that defendants manufacture, import, distribute, sell
9 and/or offer for sale to consumers throughout the State of California.

10 3. High levels of lead are commonly found in and on mugs with exterior designs that
11 defendants manufacture, import, distribute, sell and/or offer for sale to consumers throughout
12 the State of California.

13 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the
15 course of doing business shall knowingly and intentionally expose any individual to a chemical
16 known to the State to cause cancer or reproductive toxicity without first giving clear and
17 reasonable warning to such individual ..." (Cal. Health & Safety Code, § 25249.6.)

18 5. On February 27, 1987, California identified and listed lead as a chemical known
19 to cause birth defects and other reproductive harm. Lead became subject to the warning
20 requirement one year later and was therefore subject to the "clear and reasonable warning"
21 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 27001 (c); *Cal.*
22 *Health & Safety Code § 25249.8.*) Lead is hereinafter referred to as the "LISTED
23 CHEMICAL."

24 6. Defendants manufacture, import, distribute, sell and/or offer for sale in California
25 mugs with exterior designs containing the LISTED CHEMICAL without a warning including,
26 but not limited to, the *Galerie Sock Monkey Holiday Cocoa Set, #871345170, UPC #7 68395*
27 *46639 8.*

1 15. MANUFACTURER DEFENDANTS engage in the process of researching,
2 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
3 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
4 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

5 16. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
6 in the course of doing business within the meaning of California Health & Safety Code §
7 25249.11.

8 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
9 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
10 in the State of California.

11 18. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
12 the course of doing business within the meaning of California Health & Safety Code §
13 25249.11.

14 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
15 State of California.

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

21 21. ROSS, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
22 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
23 “DEFENDANTS.”

VENUE AND JURISDICTION

24
25 22. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
26 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
27 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
28

1 Marin, and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 County with respect to the PRODUCTS.

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

7 24. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
9 or association that is a citizen of the State of California, has sufficient minimum contacts in the
10 State of California, or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 - Against All Defendants)**

15 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 24, inclusive.

17 26. The citizens of the State of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*
19 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
20 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

21 27. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual...” (*Ibid.*)

25 28. On or about July 11, 2014, a sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to ROSS and various public enforcement agencies
27 stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS purchasers and users in
28 the State of California were being exposed to the LISTED CHEMICAL resulting from the

1 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
2 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

3 29. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
4 and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety
5 Code § 25249.6, and DEFENDANTS’ manufacture, importation, distribution, sales, and/or
6 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §
7 25249.6 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day notice
8 of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
9 will continue to occur in the future.

10 30. After receipt of the claims asserted in the sixty-day notice of violation, the
11 appropriate public enforcement agencies have failed to commence and diligently prosecute a
12 cause of action against DEFENDANTS under Proposition 65.

13 31. The PRODUCTS manufactured, imported, distributed, sold, and/or offered for
14 sale or use in California by DEFENDANTS contained the LISTED CHEMICAL in an amount
15 above the allowable State limits.

16 32. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
17 imported, distributed, sold, and/or offered for sale or use in California contained the LISTED
18 CHEMICAL.

19 33. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
20 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
21 the reasonably foreseeable use of the PRODUCTS.

22 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
23 continues to cause, consumer and workplace exposures to the LISTED CHEMICAL, as such
24 exposure is defined by Title 27 CCR § 25602(b).

25 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
26 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
27 and/or ingestion.

28

1 36. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
2 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
3 accidental participation in the manufacture, importation, distribution, sale, and/or offering of the
4 PRODUCTS for sale or use to individuals in the State of California.

5 37. DEFENDANTS failed to provide a “clear and reasonable warning” to those
6 consumers and/or other individuals in the State of California who were, or who could become
7 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
8 reasonably foreseeable use of the PRODUCTS.

9 38. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
10 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
11 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
12 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
13 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

14 39. As a consequence of the above-described acts, DEFENDANTS are liable for a
15 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
16 Safety Code § 25249.7(b).

17 40. As a consequence of the above-described acts, California Health & Safety Code
18 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
19 DEFENDANTS.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

22 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
23 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

24 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
25 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing,
26 distributing, selling, and/or offering the PRODUCTS for sale or use in California, without
27 providing “clear and reasonable warnings” as defined by California Code of Regulations title
28 27, § 25601 et. seq., as to the harms associated with exposure to the LISTED CHEMICAL;

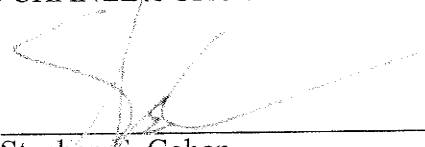
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: April 27, 2015

Respectfully Submitted,

THE CHANLER GROUP



By: _____
Stephen E. Cohen
Attorneys for Plaintiff
LAURENCE VINOCUR