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SAN FRANCISCO COUNTY
SUPERIOR COURT

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CASE MANAGEMENT CONFERENCE SET

PLAN 1 AUG 19 2005 9:02AM

Attorneys for Plaintiff
WHITNEY R. LEEMAN, Ph.D.

DEPARTMENT 212

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

11 WHITNEY R. LEEMAN, Ph.D.,)
12)
13 Plaintiff,)
14 v.)
15 ONWARD MANUFACTURING COMPANY)
16 LIMITED; INMAR INDUSTRIES, INC.;)
17 ANAHEIM PATIO & FIRESIDE, INC.; and)
18 DOES 1 through 150,)
19 Defendants.)

No. CGC-05-439671

COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF

Health & Safety Code §25249

19 WHITNEY R. LEEMAN, Ph.D., by and through her counsel, on behalf of herself, on behalf
20 all others similarly situated and on behalf of the general public, hereby alleges as follows:

21 NATURE OF THE ACTION

- 22 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
23 LEEMAN, Ph.D., on behalf of citizens of the State of California, to enforce each citizen's right to
24 be informed of the presence of and nature of toxic chemicals in consumer goods.
25 2. This Complaint seeks to remedy defendants' continuing failures to warn the citizens
26 of the State of California about the presence of, the nature of and such citizens' actual and potential
27 exposure to toluene present in or on consumer products placed into the stream of commerce by
28 defendants.

1 3. Toluene is a chemical that is identified within 22 C.C.R. §12000 and that is known
2 to the State of California to cause birth defects and other reproductive harm. Toluene shall
3 hereafter be referred to as "LISTED CHEMICAL".

4 4. The consumer products containing the LISTED CHEMICAL, and for which
5 defendants are responsible are BBQ touch-up paint, including but not limited to, *GrillPro Black*
6 *BBQ Paint (Pt. No. 70350)*. All such consumer products containing the LISTED CHEMICAL
7 shall hereafter be referred to as the "PRODUCTS".

8 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
9 & Safety Code §25249.5 *et seq.*¹ (hereafter "Proposition 65"), "No person in the course of doing
10 business shall knowingly and intentionally expose any individual to a chemical known to the state
11 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual...."

13 6. Beginning on January 1, 1991, the State of California officially listed toluene as
14 known to cause birth defects or other reproductive harm. This chemical became subject to the
15 warning requirement one year later and was therefore subject to the "clear and reasonable warning"
16 requirements of Proposition 65, beginning on January 1, 1992. (22 Code of Regulations
17 §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

18 7. Defendants' failure to provide proper mandatory warnings about exposure to the
19 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
20 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
21 violation.

22 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
23 and permanent injunctive relief to compel defendants to provide users of the PRODUCTS with the
24 appropriate Proposition 65 warning regarding the hazards of such LISTED CHEMICAL.

25 9. Plaintiff also seeks civil penalties against defendants for their violations of
26 Proposition 65, as provided for by Health & Safety Code §25249.7(b).

27
28

¹ Unless specifically noted, all statutory citations refer to California law.

PARTIES

10. Plaintiff WHITNEY R. LEEMAN, Ph.D. is a citizen of the State of California who resides in the City and County of SACRAMENTO and who is dedicated to protecting the health of California citizens, including the elimination or reduction of toxic exposures, and brings this action on behalf of the general public pursuant to Health & Safety Code §25249.7.

11. Defendant ONWARD MANUFACTURING COMPANY LIMITED ("ONWARD") is a person doing business within the meaning of Health & Safety Code §25249.11.

12. ONWARD manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in State of California.

13. Defendant INMAR INDUSTRIES, INC. ("INMAR") is a person doing business within the meaning of Health & Safety Code §25249.11.

14. INMAR manufactures, distributes and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS for sale or use in State of California.

15. Defendant ANAHEIM PATIO & FIRESIDE, INC. ("ANAHEIM PATIO") is a person doing business within the meaning of Health & Safety Code §25249.11.

16. ANAHEIM PATIO distributes and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for sale or use in State of California.

17. DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of Health & Safety Code §25249.11.

18. MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, one or more of the PRODUCTS in the State of California or for consumption or use in the State of California.

19. DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each persons

1 doing business within the meaning of Health & Safety Code §25249.11.

2 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
3 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
4 California.

5 21. DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons doing
6 business within the meaning of Health & Safety Code §25249.

7 22. RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to
8 individuals in the State of California.

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

14 24. ONWARD, INMAR, ANAHEIM PATIO, MANUFACTURER DEFENDANTS,
15 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate,
16 collectively be referred to hereafter as "DEFENDANTS".

17 **VENUE AND JURISDICTION**

18 25. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
19 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or
20 more instances of wrongful conduct occurred, and continues to occur, in the County of San
21 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
22 County.

23 26. The California Superior Court has jurisdiction over this action pursuant to
24 California Constitution Article VI, Section 10, which grants the Superior Court "original
25 jurisdiction in all causes except those given by statute to other trial courts." The statute under
26 which this action is brought does not specify any other basis of jurisdiction.

27 27. The California Superior Court has jurisdiction over DEFENDANTS based on
28 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or

1 association that either is a citizen of the State of California, has sufficient minimum contacts in the
2 State of California, or otherwise purposefully avails itself of the California market.

3 DEFENDANTS' purposeful availment renders the exercise of jurisdiction by California courts
4 consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65)**

7 28. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
8 Paragraphs 1 through 27, inclusive.

9 29. The citizens of the State of California have expressly stated in the Safe Drinking
10 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
11 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
12 other reproductive harm." (Proposition 65, §1(b).)

13 30. Proposition 65 further states that, "No person in the course of doing business shall
14 knowingly and intentionally expose any individual to a chemical known to the state to cause cancer
15 or reproductive toxicity without first giving clear and reasonable warning to such individual...."

16 31. Based on information and good faith belief, plaintiff alleges that, at all times
17 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in
18 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of these
19 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of
20 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
21 future.

22 32. Beginning on December 17, 2004, "60-Day Notices" of Proposition 65 violations
23 were provided to public enforcement agencies and to ONWARD, INMAR and ANAHEIM PATIO
24 stating that exposures to the LISTED CHEMICAL were occurring in the State of California from
25 the reasonably foreseeable uses of the PRODUCTS, without the individual users first having been
26 provided with a "clear and reasonable warning" regarding such exposure.

27 33. The appropriate public enforcement agencies have failed to commence and
28 diligently prosecute a cause of action, under Health & Safety Code §25249.6, et seq., against

1 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

2 34. At all times relevant to this action, the PRODUCTS contained the LISTED
3 CHEMICAL.

4 35. At all times relevant to this action, the DEFENDANTS knew or should have known
5 that the PRODUCTS contained the LISTED CHEMICAL.

6 36. At all times relevant to this action, the LISTED CHEMICAL was present in or on
7 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
8 individuals during the reasonably foreseeable use of PRODUCTS.

9 37. The normal and reasonably foreseeable use of the PRODUCTS has caused and
10 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
11 22 C.C.R. §12601.

12 38. Based on information and good faith belief, plaintiff alleges, that at all times
13 relevant to this action, DEFENDANTS had knowledge that individuals' normal and reasonably
14 foreseeable use of the PRODUCTS would cause an exposure to the LISTED CHEMICAL.

15 39. At all times relevant to this action, DEFENDANTS, and each of them, intended that
16 such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the
17 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
18 distribution and/or sale of PRODUCTS to individuals.

19 40. At all times relevant to this action, DEFENDANTS failed to provide a "clear and
20 reasonable warning" of reproductive toxicity (as defined by 22 C.C.R. §12601) to those consumers
21 or other individuals in the State of California who were or could become exposed to the
22 PRODUCTS and the LISTED CHEMICAL contained therein.

23 41. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
24 directly by California voters, individuals thus exposed to the LISTED CHEMICAL from the
25 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer
26 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

27 42. As a consequence of the above-described acts, DEFENDANTS, and each of them,
28 are liable, pursuant to Health & Safety Code §25249.7(b), for a maximum civil penalty of \$2,500

1 per day for each violation.

2 43. As a consequence of the above-described acts, Health & Safety Code §25249.7
3 specifically also authorizes the grant of injunctive relief under Proposition 65.

4 Wherefore, plaintiff prays judgment against DEFENDANTS as set forth hereafter.

5 **PRAYER FOR RELIEF**

6 Wherefore, plaintiff prays for judgment against defendants as follows:

7 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties
8 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation
9 -alleged herein;

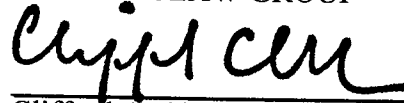
10 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
11 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,
12 without providing an identification of the LISTED CHEMICAL in the PRODUCTS as well as
13 "clear and reasonable warning[s]" as defined by 22 CCR §12601, as plaintiff shall specify in
14 further application to the Court;

15 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and

16 4. That the Court grant such other and further relief as may be just and proper.

17 Dated: March 15, 2005

18 CHANLER LAW GROUP

19 

20 Clifford A. Chanler
21 Attorneys for Plaintiff

22 WHITNEY R. LEEMAN, Ph.D.