

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2005 MAR 21 PM 1:54

GORDON PARR - CLERK

MARY ANN MORAN

1 Stephen S. Sayad, State Bar No. 104866  
2 Daniel M. Bornstein, State Bar No. 181711  
3 Laralei S. Paras, State Bar No. 203319  
4 PARAS LAW GROUP  
5 655 Redwood Highway, Suite 216  
6 Mill Valley, CA 94941  
7 Tel: (415) 380-9222  
8 Fax: (415) 380-9223

6 Clifford A. Chanler, State Bar No. 135534  
7 CHANLER LAW GROUP  
8 71 Elm Street, Suite 8  
9 New Canaan, CT 06840  
10 Tel: (203) 966-9911  
11 Fax: (203) 801-5222

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

CASE MANAGEMENT CONFERENCE SET

PLAN 1 AUG 19 2005 9:00 AM

DEPARTMENT 212

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 CGC - 05 - 439670

15 WHITNEY R. LEEMAN, Ph.D., )

No. \_\_\_\_\_ )

16 Plaintiff, )

COMPLAINT FOR CIVIL )  
PENALTIES AND INJUNCTIVE )  
RELIEF )

17 v. )

18 REGENT ALLIANCE, INC.; and DOES 1 )  
19 through 150, )

Health & Safety Code §25249 )

20 Defendants. )  
21 )  
22 )

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

25 NATURE OF THE ACTION

26 1. This Complaint is a representative action brought by plaintiff WHITNEY R.  
27 LEEMAN, Ph.D., on behalf of citizens of the State of California, to enforce each citizen's right to  
28 be informed of the presence of and nature of toxic chemicals in consumer goods.

1           2.       This Complaint seeks to remedy defendants' continuing failures to warn the citizens  
2 of the State of California about the presence of, the nature of and such citizens' actual and potential  
3 exposure to lead and cadmium present in or on consumer products placed into the stream of  
4 commerce by defendants.

5           3.       Lead and cadmium are chemicals that are identified within 22 C.C.R. §12000 and  
6 that are known to the State of California to cause birth defects and other reproductive harm. Lead  
7 and cadmium shall hereafter be referred to as "LISTED CHEMICALS".

8           4.       The consumer products containing the LISTED CHEMICALS, and for which  
9 defendants are responsible, are wine glasses and other glassware with colored artwork or designs  
10 (containing lead) on the exterior, including but not limited to, *Whole Home Holiday Harmony*  
11 *Snowmen Hand-Painted Wine Glasses, Four 17 oz. Wine Glasses, #M61624 (#0 38294 02239 1)*,  
12 and wine glasses and other glassware with colored artwork or designs (containing lead) on the  
13 exterior, including but not limited to, *Whole Home Holiday Harmony Snowmen Hand-Painted*  
14 *Wine Glasses, Four 17 oz. Wine Glasses, #M61624 (#0 38294 02239 1)*. All such consumer  
15 products containing the LISTED CHEMICALS shall hereafter be referred to as the "PRODUCTS".

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

21           6.       Beginning on October 1, 1992, the State of California officially listed lead (and lead  
22 compounds) as a known carcinogen. On February 27, 1987, the State had listed lead as a chemical  
23 known to cause birth defects and other reproductive harm. This chemical became subject to the  
24 warning requirement one year later and was therefore subject to the "clear and reasonable warning"  
25 requirements of Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively.  
26 (22 Code of Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

27  
28 <sup>1</sup> Unless specifically noted, all statutory citations refer to California law.



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

5 16. DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each persons  
6 doing business within the meaning of Health & Safety Code §25249.11.

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

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

12 19. RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to  
13 individuals in the State of California.

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

19 21. REGENT, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS  
20 and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereafter as  
21 "DEFENDANTS".

### 22 VENUE AND JURISDICTION

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

28 23. The California Superior Court has jurisdiction over this action pursuant to

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

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

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Proposition 65)**

12 25. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,  
13 Paragraphs 1 through 24, inclusive.

14 26. The citizens of the State of California have expressly stated in the Safe Drinking  
15 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition  
16 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and  
17 other reproductive harm." (Proposition 65, §1(b).)

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

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

27 29. Beginning on December 17, 2004, "60-Day Notices" of Proposition 65 violations  
28 were provided to public enforcement agencies and to REGENT stating that exposures to the

1 LISTED CHEMICALS were occurring in the State of California from the reasonably foreseeable  
2 uses of the PRODUCTS, without the individual users first having been provided with a "clear and  
3 reasonable warning" regarding such exposure.

4 30. The appropriate public enforcement agencies have failed to commence and  
5 diligently prosecute a cause of action, under Health & Safety Code §25249.6, *et seq.*, against  
6 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

7 31. At all times relevant to this action, the PRODUCTS contained the LISTED  
8 CHEMICALS.

9 32. At all times relevant to this action, the DEFENDANTS knew or should have known  
10 that the PRODUCTS contained the LISTED CHEMICALS.

11 33. At all times relevant to this action, the LISTED CHEMICALS were present in or on  
12 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to  
13 individuals during the reasonably foreseeable use of PRODUCTS.

14 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
15 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by  
16 22 C.C.R. §12601.

17 35. Based on information and good faith belief, plaintiff alleges, that at all times  
18 relevant to this action, DEFENDANTS had knowledge that individuals' normal and reasonably  
19 foreseeable use of the PRODUCTS would cause an exposure to the LISTED CHEMICALS.

20 36. At all times relevant to this action, DEFENDANTS, and each of them, intended that  
21 such exposures to the LISTED CHEMICALS from the reasonably foreseeable use of the  
22 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,  
23 distribution and/or sale of PRODUCTS to individuals.

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

28 38. Contrary to the express policy and statutory prohibition of Proposition 65, enacted

1 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the  
2 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer  
3 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

10 **PRAYER FOR RELIEF**

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

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

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

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

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

22 Dated: March 14, 2005

23 PARAS LAW GROUP

24 

25 Daniel M. Bornstein  
26 Attorneys for Plaintiff  
27 WHITNEY R. LEEMAN, Ph.D.  
28