

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1500
(03/01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF CIVIL COMPLAINT FILING

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) WHITNEY R. LEEMAN, Ph.D.		
	DEFENDANT(S) VOLUME DISTRIBUTORS; ELEGANT DINING PRODUCTS; and DOES 1 through 150		
CASE INFO	COURT DOCKET NUMBER CGC-05-441494	COURT NAME SAN FRANCISCO SUPERIOR COURT	
	SHORT CASE NAME LEEMAN v. VOLUME DISTRIBUTORS, et al.		
REPORT INFO	TYPE OF CLAIM (Check All That Apply)		RELIEF SOUGHT (Check All That Apply)
	<input type="checkbox"/> Propostion 65 Unlawful Discharge <input checked="" type="checkbox"/> Proposition 65 Failure to Warn <input type="checkbox"/> B&P Code section 17200 <input type="checkbox"/> Other _____		<input checked="" type="checkbox"/> Warning <input type="checkbox"/> Discharge Ban <input checked="" type="checkbox"/> Civil Penalty
COPY OF COMPLAINT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Laralei S. Paras		
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ENDORSED
FILED
San Francisco County Superior Court
MAY 23 2005
GORDON PARK-LI, Clerk
BY: CRISTINA E. BAUTISTA
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET
PLAN I OCT 21 2005 9:00AM
DEPARTMENT 212

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, Ph.D.,)
17 Plaintiff,)
18 v.)
19 VOLUME DISTRIBUTORS; ELEGANT)
20 DINING PRODUCTS; and DOES 1 through)
21 150,)
22 Defendants.)

No. 05-441494
**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

Health & Safety Code §25249

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 defendant is responsible, are tumblers and other glassware intended for the consumption of food or
10 beverages with colored artwork or designs (containing lead) on the exterior, including but not
11 limited to, *Elegant Dining Tumbler* (#7 49732 03593 4) and tumblers and other glassware intended
12 for the consumption of food or beverages with colored artwork or designs (containing cadmium) on
13 the exterior, including but not limited to, *Elegant Dining Tumbler* (#7 49732 03593 4). All such
14 consumer products containing the LISTED CHEMICALS shall hereafter be referred to as the
15 "PRODUCTS".

16 5. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health
17 & Safety Code §25249.5 *et seq.*¹ (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. On February 27, 1987, the State had listed lead as a chemical known to cause birth
22 defects and other reproductive harm. This chemical became subject to the warning requirement
23 one year later and was therefore subject to the "clear and reasonable warning" requirements of
24 Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively. (22 Code of
25 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

26 7. Beginning on October 1, 1987, the State of California officially listed cadmium as a
27

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

1 known carcinogen. On May 1, 1997, the State had listed cadmium as a chemical known to cause
2 birth defects or other reproductive harm. This chemical became subject to the warning requirement
3 one year later and was therefore subject to the "clear and reasonable warning" requirements of
4 Proposition 65, beginning on October 1, 1988 and May 1, 1998, respectively. (22 Code of
5 Regulations §12000(b)(c); Health and Safety Code §25249.5 *et seq.*)

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

10 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
11 and permanent injunctive relief to compel defendants to provide users of the PRODUCTS with the
12 appropriate Proposition 65 warning regarding the hazards of such LISTED CHEMICALS.

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

15 PARTIES

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

20 12. Defendant VOLUME DISTRIBUTORS ("VOLUME") is a person doing business
21 within the meaning of Health & Safety Code §25249.11.

22 13. VOLUME manufactures, distributes and/or offers the PRODUCTS for sale or use in
23 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
24 PRODUCTS for sale or use in State of California.

25 14. Defendant ELEGANT DINING PRODUCTS ("ELEGANT DINING") is a person
26 doing business within the meaning of Health & Safety Code §25249.11.

27 15. ELEGANT DINING manufactures, distributes and/or offers the PRODUCTS for
28 sale or use in the State of California or implies by its conduct that it manufactures, distributes

1 and/or offers the PRODUCTS for sale or use in State of California.

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

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

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

11 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
12 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
13 California.

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

16 21. RETAIL DEFENDANTS offer one or more of the PRODUCTS for sale to
17 individuals in the State of California.

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

23 23. VOLUME, ELEGANT DINING, MANUFACTURER DEFENDANTS,
24 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate,
25 collectively be referred to hereafter as "DEFENDANTS".

26 **VENUE AND JURISDICTION**

27 24. Venue is proper in the San Francisco Superior Court, pursuant to Code of Civil
28 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one or

1 more instances of wrongful conduct occurred, and continues to occur, in the County of San
2 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this
3 County.

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

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

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65)**

16 27. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
17 Paragraphs 1 through 26, inclusive.

18 28. The citizens of the State of California have expressly stated in the Safe Drinking
19 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
20 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
21 other reproductive harm." (Proposition 65, §1(b).)

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

25 30. Based on information and good faith belief, plaintiff alleges that, at all times
26 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in
27 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of these
28 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of

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3 County.

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

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26 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in
27 violation Health & Safety Code §25249.6, et seq., and that DEFENDANTS' offensive sale of these
28 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of

1 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
2 future.

3 31. Beginning on March 10, 2005, "60-Day Notices" of Proposition 65 violations were
4 provided to public enforcement agencies and to VOLUME and ELEGANT DINING stating that
5 exposures to the LISTED CHEMICALS were occurring in the State of California from the
6 reasonably foreseeable uses of the PRODUCTS, without the individual users first having been
7 provided with a "clear and reasonable warning" regarding such exposure.

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

11 33. At all times relevant to this action, the PRODUCTS contained the LISTED
12 CHEMICALS.

13 34. At all times relevant to this action, the DEFENDANTS knew or should have known
14 that the PRODUCTS contained the LISTED CHEMICALS.

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

18 36. The normal and reasonably foreseeable use of the PRODUCTS has caused and
19 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
20 22 C.C.R. §12601.

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

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

28 39. At all times relevant to this action, DEFENDANTS failed to provide a "clear and

1 reasonable warning” of reproductive toxicity (as defined by 22 C.C.R. §12601) to those consumers
2 or other individuals in the State of California who were or could become exposed to the
3 PRODUCTS and the LISTED CHEMICALS contained therein.

4 40. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
5 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the
6 PRODUCTS, without “clear and reasonable warning”, have suffered and continue to suffer
7 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

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

14 **PRAYER FOR RELIEF**

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

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

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

24 3. That the Court grant plaintiff her reasonable attorney’s fees and costs of suit; and

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


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Dated: May 23, 2005

Respectfully Submitted,
MARTIN LAW GROUP



Christopher M. Martin
Attorneys for Plaintiff
WHITNEY R. LEEMAN, Ph.D.

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