

**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**

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|                                           |                                                                                                                                                                                                                             |                                                   |                                                                                                                                            |
|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PARTIES TO THE ACTION</b>              | PLAINTIFF(S)<br><b>WHITNEY R. LEEMAN, Ph.D.</b>                                                                                                                                                                             |                                                   |                                                                                                                                            |
|                                           | DEFENDANT(S)<br><b>INNOVAGE, INC.; DS-MAX U.S.A. INC.; and DOES 1 through 150</b>                                                                                                                                           |                                                   |                                                                                                                                            |
| <b>CASE INFO</b>                          | COURT DOCKET NUMBER<br><b>CGC-05-441499</b>                                                                                                                                                                                 | COURT NAME<br><b>SAN FRANCISCO SUPERIOR COURT</b> |                                                                                                                                            |
|                                           | SHORT CASE NAME<br><b>LEEMAN v. INNOVAGE, INC., et al.</b>                                                                                                                                                                  |                                                   |                                                                                                                                            |
| <b>REPORT INFO</b>                        | TYPE OF CLAIM (Check All That Apply)                                                                                                                                                                                        |                                                   | RELIEF SOUGHT (Check All That Apply)                                                                                                       |
|                                           | <input type="checkbox"/> Proposition 65 Unlawful Discharge<br><input checked="" type="checkbox"/> Proposition 65 Failure to Warn<br><input type="checkbox"/> B&P Code section 17200<br><input type="checkbox"/> Other _____ |                                                   | <input checked="" type="checkbox"/> Warning<br><input type="checkbox"/> Discharge Ban<br><input checked="" type="checkbox"/> Civil Penalty |
| <b>COPY OF COMPLAINT MUST BE ATTACHED</b> |                                                                                                                                                                                                                             |                                                   |                                                                                                                                            |
| <b>FILER INFO</b>                         | NAME OF CONTACT<br><b>Laralei S. Paras</b>                                                                                                                                                                                  |                                                   |                                                                                                                                            |
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|                                           | CITY<br><b>Mill Valley</b>                                                                                                                                                                                                  | STATE<br><b>CA</b>                                | ZIP<br>E-MAIL ADDRESS<br><b>lparas@paraslaw.com</b>                                                                                        |

**FILING INSTRUCTIONS:** This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the complaint to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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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 900AM  
DEPARTMENT 212

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

05-441499

WHITNEY R. LEEMAN, Ph.D.,

Plaintiff,

v.

INNOVAGE, INC.; DS-MAX U.S.A. INC.;  
and DOES 1 through 150,

Defendants.

No. 05-441499

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

Health & Safety Code §25249

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

**NATURE OF THE ACTION**

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

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

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

4. The consumer products containing the LISTED CHEMICAL, and for which defendant is responsible, are mugs and other ceramic containers intended for the consumption of food or beverages with colored artwork or designs (containing lead) on the exterior, including but not limited to, *Christmas Mugs – S/2 Item Number 2004162 (#6 94202 90058 1)*. All such consumer products containing the LISTED CHEMICAL shall hereafter be referred to as the “PRODUCTS”.

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

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

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

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

1 violation.

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

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

7 PARTIES

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

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

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

17 13. Defendant DS-MAX U.S.A. INC. ("DS-MAX") is a person doing business within  
18 the meaning of Health & Safety Code §25249.11.

19 14. DS-MAX manufactures, distributes and/or offers the PRODUCTS for sale or use in  
20 the State of California or implies by its conduct that it manufactures, distributes and/or offers the  
21 PRODUCTS for sale or use in State of California.

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

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

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

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

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

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

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

22. INNOVAGE, DS-MAX, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereafter as “DEFENDANTS”.

## VENUE AND JURISDICTION

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

24. 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 jurisdiction.

25. The California Superior Court has jurisdiction over DEFENDANTS based on

1 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
2 association that either is a citizen of the State of California, has sufficient minimum contacts in the  
3 State of California, or otherwise purposefully avails itself of the California market.

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

#### 6 **FIRST CAUSE OF ACTION**

##### 7 **(Violation of Proposition 65)**

8 26. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,  
9 Paragraphs 1 through 25, inclusive.

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

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

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

23 30. Beginning on March 10, 2005, "60-Day Notices" of Proposition 65 violations were  
24 provided to public enforcement agencies and to INNOVAGE and DS-MAX stating that exposures  
25 to the LISTED CHEMICAL were occurring in the State of California from the reasonably  
26 foreseeable uses of the PRODUCTS, without the individual users first having been provided with a  
27 "clear and reasonable warning" regarding such exposure.

28 31. The appropriate public enforcement agencies have failed to commence and

1 diligently prosecute a cause of action, under Health & Safety Code §25249.6, *et seq.*, against  
2 DEFENDANTS based on the claims asserted in Plaintiff's 60-Day Notices.

3 32. At all times relevant to this action, the PRODUCTS contained the LISTED  
4 CHEMICAL.

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

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

10 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
11 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by  
12 22 C.C.R. §12601.

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

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

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

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

28 40. As a consequence of the above-described acts, DEFENDANTS, and each of them,

are liable, pursuant to Health & Safety Code §25249.7(b), for a maximum civil penalty of \$2,500 per day for each violation.

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

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

**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against defendants as follows:

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

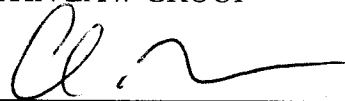
2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California, without providing an identification of the LISTED CHEMICAL in the PRODUCTS as well as "clear and reasonable warning[s]" as defined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

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

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

Dated: May 23, 2005

Respectfully Submitted,  
MARTIN LAW GROUP



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