

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

FORM JUS 1500
(03/01)

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

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

REPORT OF CIVIL COMPLAINT FILING

Please print or type required information

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PARTIES TO THE ACTION	PLAINTIFF(S) WHITNEY R. LEEMAN, PH.D.	
	DEFENDANT(S) DARICE, INC.; and DOES 1 through 150	
CASE INFO	COURT DOCKET NUMBER CGC-05-441334	COURT NAME SAN FRANCISCO SUPERIOR COURT
	SHORT CASE NAME Leeman v. Darice, Inc., et al.	
REPORT INFO	TYPE OF CLAIM (Check All That Apply) ☐ Proposition 65 Unlawful Discharge ☒ Proposition 65 Failure to Warn ☐ B&P Code section 17200 ☐ Other _____	
	RELIEF SOUGHT (Check All That Apply) ☒ Warning ☐ Discharge Ban ☒ Civil Penalty	
COPY OF COMPLAINT MUST BE ATTACHED For Internal Use Only		
FILER INFO	NAME OF CONTACT Daniel Bornstein	
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ENDORSED
FILED
San Francisco County Superior Court

MAY 16 2005

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CASE MANAGEMENT CONFERENCE SET

PLAN I OCT 14 2005 9~~00~~AM

DEPARTMENT 212

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

CGC 05 441334

WHITNEY R. LEEMAN, Ph.D.,

No. _____

Plaintiff,

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

v.

DARICE, INC.; and DOES 1 through 150,

Health & Safety Code §25249

Defendants.

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, *3.75 IN Funnel Mug, #2449-05 (#6 52695 31487 2)*. 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.*¹ (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 violation.

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

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

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

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 who brings this action on behalf of the general public pursuant to Health & Safety Code §25249.7.

11. Defendant DARICE, INC. (“DARICE”) is a person doing business within the meaning of Health & Safety Code §25249.11.

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

14. 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.

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

16. 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.

17. DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons doing

1 business within the meaning of Health & Safety Code §25249.

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

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

9 20. DARICE, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS
10 and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereafter as
11 "DEFENDANTS".

12 VENUE AND JURISDICTION

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

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

22 23. The California Superior Court has jurisdiction over DEFENDANTS based on
23 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
24 association that either is a citizen of the State of California, has sufficient minimum contacts in the
25 State of California, or otherwise purposefully avails itself of the California market.
26 DEFENDANTS' purposeful availment renders the exercise of jurisdiction by California courts
27 consistent with traditional notions of fair play and substantial justice.
28

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65)**

3 24. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
4 Paragraphs 1 through 23, inclusive.

5 25. The citizens of the State of California have expressly stated in the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
7 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
8 other reproductive harm." (Proposition 65, §1(b).)

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

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

18 28. Beginning on March 10, 2005, "60-Day Notices" of Proposition 65 violations were
19 provided to public enforcement agencies and to DARICE stating that exposures to the LISTED
20 CHEMICAL were occurring in the State of California from the reasonably foreseeable uses of the
21 PRODUCTS, without the individual users first having been provided with a "clear and reasonable
22 warning" regarding such exposure.

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

26 30. At all times relevant to this action, the PRODUCTS contained the LISTED
27 CHEMICAL.

28 31. At all times relevant to this action, the DEFENDANTS knew or should have known

1 that the PRODUCTS contained the LISTED CHEMICAL.

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

5 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
6 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
7 22 C.C.R. §12601.

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

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

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

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

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

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

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

1 **PRAYER FOR RELIEF**

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

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

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

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

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

13 Dated: May 16, 2005

14 Respectfully Submitted,
15 PARAS LAW GROUP

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17 Daniel Bornstein
18 Attorneys for Plaintiff
19 WHITNEY R. LEEMAN, Ph.D.
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