

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	<small>PLAINTIFF(S)</small>	WHITNEY R. LEEMAN, PH.D.		
	<small>DEFENDANT(S)</small>	ALCO INDUSTRIES, INC.; and DOES 1 through 150		
CASE INFO	<small>COURT DOCKET NUMBER</small>	CGC-05-441332	<small>COURT NAME</small>	SAN FRANCISCO SUPERIOR COURT
	<small>SHORT CASE NAME</small>	Leeman v. Alco Industries, Inc., et al.		
REPORT INFO	<small>TYPE OF CLAIM (Check All That Apply)</small>		<small>RELIEF SOUGHT (Check All That Apply)</small>	
	<input type="checkbox"/> Proposition 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	<small>NAME OF CONTACT</small>	Daniel Bornstein		
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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 FOR THE CITY AND COUNTY OF SAN FRANCISCO
19 UNLIMITED CIVIL JURISDICTION

20 WHITNEY R. LEEMAN, Ph.D.,)
21)
22 Plaintiff,)
23)
24 v.)
25)
26 ALCO INDUSTRIES, INC.; and DOES 1)
27 through 150,)
28 Defendants.)

ENDORSED
FILED
San Francisco County Superior Court
MAY 16 2005
GORDON PARK-LI, Clerk
BY: JUN P. PANELO
Deputy Clerk

CASE MANAGEMENT CONFERENCE SET
PLAN I OCT 14 2005 900AM
DEPARTMENT 212

No. **CGC 05 441332**
**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

1 be informed of the presence of and nature of toxic chemicals in consumer goods.

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

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

9 4. The consumer products containing the LISTED CHEMICAL, and for which
10 defendant is responsible, are tumblers, wine glasses and other glassware intended for the
11 consumption of food or beverages with colored artwork or designs (containing lead) on the
12 exterior, including but not limited to, *Beverage Tyme 16 Piece Glassware Set, #4053 (#0 48676*
13 *04053 1)* and *Litetyme Set of 4 Hand Painted Wine Glasses, #3855GRP (#0 48676 03855 2)*. All
14 such consumer products containing the LISTED CHEMICAL 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. Defendants' failure to provide proper mandatory warnings about exposure to the
27

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

1 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
2 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
3 violation.

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

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

9 PARTIES

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

14 11. Defendant ALCO INDUSTRIES, INC. ("ALCO") is a person doing business within
15 the meaning of Health & Safety Code §25249.11.

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

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

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

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

28 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or

1 transport one or more of the PRODUCTS to individuals, businesses or retailers in the State of
2 California.

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

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

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

12 20. ALCO, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS and
13 RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereafter as
14 "DEFENDANTS".

15 VENUE AND JURISDICTION

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

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

25 23. The California Superior Court has jurisdiction over DEFENDANTS based on
26 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
27 association that either is a citizen of the State of California, has sufficient minimum contacts in the
28 State of California, or otherwise purposefully avails itself of the California market.

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

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65)**

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

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

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

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

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

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

28 30. At all times relevant to this action, the PRODUCTS contained the LISTED

1 CHEMICAL.

2 31. At all times relevant to this action, the DEFENDANTS knew or should have known
3 that the PRODUCTS contained the LISTED CHEMICAL.

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

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

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

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

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

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

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

28 39. As a consequence of the above-described acts, Health & Safety Code §25249.7 also

1 specifically authorizes the grant of injunctive relief under Proposition 65.

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

3 **PRAYER FOR RELIEF**

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

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

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

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

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

15 Dated: May 16, 2005

16 Respectfully Submitted,
17 PARAS LAW GROUP

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19 Daniel Bornstein
20 Attorneys for Plaintiff
21 RUSSELL BRIMER
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