

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

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S)	WHITNEY R. LEEMAN, PH.D.		
	DEFENDANT(S)	GROCERY OUTLET, INC.; and DOES 1 through 150		
<b>CASE INFO</b>	COURT DOCKET NUMBER	CGC-05-441329	COURT NAME	SAN FRANCISCO SUPERIOR COURT
	SHORT CASE NAME	Leeman v. Grocery Outlet, Inc., et al.		
<b>REPORT INFO</b>	TYPE OF CLAIM (Check All That Apply)		RELIEF SOUGHT (Check All That Apply)	
	<input type="checkbox"/> Proposition 65 Unlawful Discharge	<input checked="" type="checkbox"/> Proposition 65 Failure to Warn	<input checked="" type="checkbox"/> Warning	<input type="checkbox"/> Discharge Ban
<input type="checkbox"/> B&P Code section 17200		<input checked="" type="checkbox"/> Civil Penalty		For Internal Use Only
<input type="checkbox"/> Other _____		COPY OF COMPLAINT MUST BE ATTACHED		
<b>FILER INFO</b>	NAME OF CONTACT	Daniel Bornstein		
	ORGANIZATION	Paras Law Group		TELEPHONE NUMBER
	ADDRESS	655 Redwood Highway, Suite 216		((415)) 380-9222
	CITY	STATE	ZIP	FAX NUMBER
	Mill Valley	CA		((415)) 380-9223
		E-MAIL ADDRESS		
		dbornstein@paraslaw.com		

**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.

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

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 16 2005

GORDON PARK-LI, Clerk  
BY: JUN P. PANELO  
Deputy Clerk

6 Christopher M. Martin, State Bar No. 186021  
7 MARTIN LAW GROUP  
8 23 N. Lincoln, Suite 204  
9 Hinsdale, IL 60521  
10 Tel: (630) 789-6998  
11 Fax: (630) 214-0979

CASE MANAGEMENT CONFERENCE SET

PLAN / OCT 14 2005 9:00 AM

DEPARTMENT 212

12 Attorneys for Plaintiff  
13 WHITNEY R. LEEMAN, Ph.D.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE CITY AND COUNTY OF SAN FRANCISCO

16 UNLIMITED CIVIL JURISDICTION

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

No. EGC 05 44 13 29

18 Plaintiff, )

COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF

19 v. )

20 <sup>OUTLET</sup>  
GROCERY ~~OUTLET~~, INC.; and DOES 1 )  
through 150, )

Health & Safety Code §25249

21 Defendants. )  
22 )  
23 )

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

26 NATURE OF THE ACTION

27 1. This Complaint is a representative action brought by plaintiff WHITNEY R.  
28 LEEMAN, Ph.D., on behalf of citizens of the State of California, to enforce each citizen's right to

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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 mugs and other ceramic containers intended for the consumption of  
11 food or beverages with colored artwork or designs (containing lead) on the exterior, including but  
12 not limited to, *Happy B-Day Mug, #VN222 (#7 89690 05785 2)* and *Latte Mug (#7 29503 00217*

13 4). All such consumer products containing the LISTED CHEMICAL shall hereafter be referred to  
14 as the "PRODUCTS".

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

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

25 7. Defendants' failure to provide proper mandatory warnings about exposure to the  
26 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition

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

1 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such  
2 violation.

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

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

8 PARTIES

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

13 11. Defendant GROCERY OUTLET INC. ("GROCERY OUTLET") is a person doing  
14 business within the meaning of Health & Safety Code §25249.11.

15 12. GROCERY OUTLET distributes and/or offers the PRODUCTS for sale or use in  
16 the State of California or implies by its conduct that it distributes and/or offers the PRODUCTS for  
17 sale or use in State of California.

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

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

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

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

1 California.

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

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

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

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

14 **VENUE AND JURISDICTION**

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

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

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

1 consistent with traditional notions of fair play and substantial justice.

2 **FIRST CAUSE OF ACTION**

3 **(Violation of Proposition 65)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 **PRAYER FOR RELIEF**

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

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

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

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

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

14 Dated: May 16, 2005

15 Respectfully Submitted,  
16 PARAS LAW GROUP

17 

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



