

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

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

FORM JUS 1500
(03/01)

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) ROD'S GENERAL STORE; ROD LOOMIS SALES; LOOMCO INTERNATIONAL; HERMITAGE POTTERY; and DOES 1 through 150		
CASE INFO	COURT DOCKET NUMBER CGC-05-441501	COURT NAME SAN FRANCISCO SUPERIOR COURT	
	SHORT CASE NAME LEEMAN v. ROD'S GENERAL STORE, et al.		
REPORT INFO	TYPE OF CLAIM (Check All That Apply)		RELIEF SOUGHT (Check All That Apply)
	☐ Proposition 65 Unlawful Discharge ☒ Proposition 65 Failure to Warn ☐ B&P Code section 17200 ☐ Other _____		☒ Warning ☐ Discharge Ban ☒ Civil Penalty
COPY OF COMPLAINT MUST BE ATTACHED			
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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

WHITNEY R. LEEMAN, Ph.D.,

Plaintiff,

v.

ROD'S GENERAL STORE; ROD LOOMIS
SALES; LOOMCO INTERNATIONAL;
HERMITAGE POTTERY; and DOES 1
through 150,

Defendants.

No. **05-441961-41-50,**

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

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

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

24 7. Defendants' failure to provide proper mandatory warnings about exposure to the
25 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
26 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
27

28 ¹ 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 ROD'S GENERAL STORE ("ROD'S GENERAL") is a person doing
13 business within the meaning of Health & Safety Code §25249.11.

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

17 13. Defendant ROD LOOMIS SALES ("ROD LOOMIS") is a person doing business
18 within the meaning of Health & Safety Code §25249.11.

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

22 15. Defendant LOOMCO INTERNATIONAL ("LOOMCO") is a person doing business
23 within the meaning of Health & Safety Code §25249.11.

24 16. LOOMCO manufactures, distributes and/or offers the PRODUCTS for sale or use in
25 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
26 PRODUCTS for sale or use in State of California.

27 17. Defendant HERMITAGE POTTERY ("HERMITAGE") is a person doing business
28 within the meaning of Health & Safety Code §25249.11.

1 18. HERMITAGE manufactures, distributes and/or offers the PRODUCTS for sale or
2 use in the State of California or implies by its conduct that it manufactures, distributes and/or offers
3 the PRODUCTS for sale or use in State of California.

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

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

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

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

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

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

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

25 26. ROD'S GENERAL, ROD LOOMIS, LOOMCO, HERMITAGE,
26 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS and RETAIL
27 DEFENDANTS shall, where appropriate, collectively be referred to hereafter as
28 "DEFENDANTS".

1 **VENUE AND JURISDICTION**

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

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

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

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

19 30. Plaintiff realleges and incorporates by reference, as if specifically set forth herein,
20 Paragraphs 1 through 29, inclusive.

21 31. The citizens of the State of California have expressly stated in the Safe Drinking
22 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, et seq. ("Proposition
23 65") that they must be informed "about exposures to chemicals that cause cancer, birth defects and
24 other reproductive harm." (Proposition 65, §1(b).)

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

28 33. Based on information and good faith belief, plaintiff alleges that, at all times

1 relevant to this Complaint, DEFENDANTS have engaged in the sales of these PRODUCTS in
2 violation Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS' offensive sale of these
3 PRODUCTS continues to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice of
4 Violation. Plaintiff also alleges and believes that such violations will continue to occur into the
5 future.

6 34. Beginning on March 10, 2005, "60-Day Notices" of Proposition 65 violations were
7 provided to public enforcement agencies and to ROD'S GENERAL, ROD LOOMIS, LOOMCO,
8 and HERMITAGE stating that exposures to the LISTED CHEMICAL were occurring in the State
9 of California from the reasonably foreseeable uses of the PRODUCTS, without the individual users
10 first having been provided with a "clear and reasonable warning" regarding such exposure.

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

14 36. At all times relevant to this action, the PRODUCTS contained the LISTED
15 CHEMICAL.

16 37. At all times relevant to this action, the DEFENDANTS knew or should have known
17 that the PRODUCTS contained the LISTED CHEMICAL.

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

21 39. The normal and reasonably foreseeable use of the PRODUCTS has caused and
22 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by
23 22 C.C.R. §12601.

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

27 41. At all times relevant to this action, DEFENDANTS, and each of them, intended that
28 such exposures to the LISTED CHEMICAL from the reasonably foreseeable use of the

1 PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture,
2 distribution and/or sale of PRODUCTS to individuals.

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

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

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

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

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

17 **PRAYER FOR RELIEF**

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

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

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

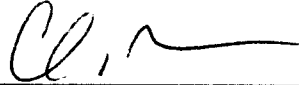
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- 1 3. That the Court grant plaintiff her reasonable attorney's fees and costs of suit; and
2 4. That the Court grant such other and further relief as may be just and proper.

3 Dated: May 23, 2005

4 Respectfully Submitted,
5 MARTIN LAW GROUP

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7 _____
8 Christopher M. Martin
9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, Ph.D.
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