

NOV 07 2005

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

1 Clifford A. Chanler, State Bar No. 135534
2 Daniel Bornstein, State Bar No. 181711
3 Laralei S. Paras, State Bar No. 203319
4 HIRST & CHANLER
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565

CASE MANAGEMENT CONFERENCE SET

8 Tel: (510) 848-8880
9 Fax: (510) 848-8118

APR 07 2006 - 9 AM

10 Attorneys for Plaintiff
11 WHITNEY R. LEEMAN, Ph.D.

DEPARTMENT 212

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

00C05446419

17 WHITNEY R. LEEMAN, Ph.D.,)
18 Plaintiff,)
19 v.)
20 LAID BACK ENTERPRISES, INC.; and)
21 DOES 1 through 150, inclusive.)
22 Defendants.)

No. _____
COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF
(Health & Safety Code §25249, et seq.)

23
24
25 WHITNEY R. LEEMAN, Ph.D., by and through her counsel, on behalf of herself, on behalf
26 all others similarly situated and on behalf of the general public, hereby alleges as follows:

27 NATURE OF THE ACTION

28 1. This Complaint is a representative action brought by plaintiff WHITNEY R.

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

1 LEEMAN, Ph.D., on behalf of citizens of the State of California, to enforce each citizen's right to
2 be informed of the presence of and nature of toxic chemicals in consumer goods.

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

7 3. Lead and cadmium are chemicals that are identified within Title 22, California Code
8 of Regulations ("CCR") §12000 and that are known to the State of California to cause birth defects
9 and other reproductive harm. Lead and cadmium shall hereafter be referred to as "LISTED
10 CHEMICALS". The consumer products containing one or more of the LISTED CHEMICALS,
11 and for which defendant is responsible, are shot glasses and other glassware intended for the
12 consumption of food or beverages with colored artwork or designs on the exterior including, but
13 not limited to, *Shot Glass, Cheers to 21 Years*, and mugs and other ceramic containers intended for
14 the consumption of food or beverages with colored artwork or designs on the exterior including,
15 but not limited to, *Mug, Genuine Antique Golfer*. All such consumer products containing one or
16 more of the LISTED CHEMICALS shall hereafter be referred to as the "PRODUCTS".

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

22 5. On February 27, 1987, the State had listed lead as a chemical known to cause birth
23 defects and other reproductive harm. This chemical became subject to the warning requirement
24 one year later and was therefore subject to the "clear and reasonable warning" requirements of
25 Proposition 65, beginning on October 1, 1993 and February 27, 1988, respectively. (22 CCR
26 §12000(b)(c); Proposition 65)

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

1 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
2 engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing,
3 one or more of the PRODUCTS in the State of California or for consumption or use in the State of
4 California.

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

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

10 17. DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons doing
11 business within the meaning of Health & Safety Code §25249.11.

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

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

19 20. LAID BACK, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to
21 hereafter as "DEFENDANTS".

22 VENUE AND JURISDICTION

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

28 22. The California Superior Court has jurisdiction over this action pursuant to

1 California Constitution Article VI, Section 10, which grants the Superior Court “original
2 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
3 which this action is brought does not specify any other basis of jurisdiction.

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

10 **FIRST CAUSE OF ACTION**

11 **(Violation of Proposition 65)**

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

14 25. The citizens of the State of California have expressly stated in the Safe Drinking
15 Water and Toxic Enforcement Act of 1986, Health & Safety Code §25249.5, *et seq.* (“Proposition
16 65”) that they must be informed “about exposures to chemicals that cause cancer, birth defects and
17 other reproductive harm.” (Proposition 65, §1(b).)

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

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

27 28. On September 2, 2005, a “60-Day Notice” of Proposition 65 violations was
28 provided to public enforcement agencies and to LAID BACK ENTERPRISES, INC. stating that

1 exposures to the LISTED CHEMICALS were occurring in the State of California from the
2 reasonably foreseeable uses of the PRODUCTS, without the individual users first having been
3 provided with a "clear and reasonable warning" regarding such exposure.

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

7 30. At all times relevant to this action, the PRODUCTS contained the LISTED
8 CHEMICALS.

9 31. At all times relevant to this action, the DEFENDANTS knew or should have known
10 that the PRODUCTS contained the LISTED CHEMICALS.

11 32. At all times relevant to this action, the LISTED CHEMICALS were present in or on
12 the PRODUCTS in such a way as to be available for transfer or release from PRODUCTS to
13 individuals during the reasonably foreseeable use of PRODUCTS.

14 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and
15 continues to cause an exposure to the LISTED CHEMICALS, as such exposure is defined by
16 22 CCR §12601.

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

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

24 36. At all times relevant to this action, DEFENDANTS failed to provide a "clear and
25 reasonable warning" of reproductive toxicity (as defined by 22 CCR §12601) to those consumers or
26 other individuals in the State of California who were or could become exposed to the PRODUCTS
27 and the LISTED CHEMICALS contained therein.

28 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted

1 directly by California voters, individuals thus exposed to the LISTED CHEMICALS from the
2 PRODUCTS, without "clear and reasonable warning", have suffered and continue to suffer
3 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

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

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

9 Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
10 set forth hereafter.

11 **PRAYER FOR RELIEF**

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

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

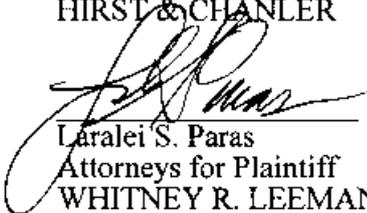
16 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
17 permanently enjoin DEFENDANTS from offering the PRODUCTS for sale or use in California,
18 without providing an identification of the LISTED CHEMICALS in the PRODUCTS as well as
19 "clear and reasonable warning[s]"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

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

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

23 Dated: November 7, 2005

Respectfully Submitted,
HIRST & CHANLER

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25 Laralei S. Paras
26 Attorneys for Plaintiff
27 WHITNEY R. LEEMAN, Ph.D.
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