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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES
14 UNLIMITED CIVIL JURISDICTION
15

16 WHITNEY R. LEEMAN, Ph.D.,

17 Plaintiff,

18 v.

19 GALCO OLD WORLD GROCERY; and
20 DOES 1 through 150, inclusive,

21 Defendants.

BC363345

Case No.: _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code §25249, *et seq.*)

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WHITNEY R. LEEMAN, 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, 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.

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

5 3. Lead is a chemical that is identified in Title 22, California Code of Regulations
6 ("CCR") §12000 that is known to the State of California to cause birth defects and other
7 reproductive harm. Lead shall hereafter be referred to as the "LISTED CHEMICAL." The
8 consumer products containing the LISTED CHEMICAL, and for which defendants are responsible,
9 are glass soda bottles with colored artwork or designs (containing lead) on the exterior surface
10 including, but not limited to, *Original Nehi Grape Glass Bottle, 12 fl. oz. (UPC #0 29500 21252*
11 *2)*. All such consumer products containing the LISTED CHEMICAL on the exterior shall
12 hereafter be referred to as the "PRODUCTS."

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

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

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

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

1 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
2 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
3 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
4 CHEMICAL.

5 8. 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 9. Plaintiff WHITNEY R. LEEMAN is a citizen of the State of California who is
9 dedicated to protecting the health of California citizens, including the elimination or reduction of
10 toxic exposures from consumer products, and who brings this action on behalf of the general
11 public pursuant to Health & Safety Code §25249.7.

12 10. Defendant GALCO OLD WORLD GROCERY ("GALCO") is a person doing
13 business within the meaning of Health & Safety Code §25249.11.

14 11. GALCO manufactures, distributes and/or offers the PRODUCTS for sale or use in
15 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
16 PRODUCTS for sale or use in the State of California.

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

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

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

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

28 16. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each persons

1 doing business within the meaning of Health & Safety Code §25249.11.

2 17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State
3 of California.

4 18. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
5 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
6 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
7 the 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 19. GALCO, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
10 RETAIL DEFENDANTS, and Defendants DOES 1 through 150 shall, where appropriate,
11 collectively be referred to hereafter as “DEFENDANTS”.

12 **VENUE AND JURISDICTION**

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

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

22 22. 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 personal jurisdiction by California
27 courts consistent with traditional notions of fair play and substantial justice.

28 **FIRST CAUSE OF ACTION**

(Violation of Proposition 65)

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2 23. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
3 Paragraphs 1 through 22, inclusive.

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

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

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

17 27. On July 14, 2006, a “60-Day Notice” of Proposition 65 violations containing a
18 Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1) was provided to
19 public enforcement agencies and to GALCO OLD WORLD GROCERY stating that exposures to
20 LISTED CHEMICAL were occurring in the State of California from the reasonably foreseeable
21 uses of the PRODUCTS, without the individual purchasers and users first having been provided
22 with a “clear and reasonable warning” regarding such exposure.

23 28. 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 Notice.

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

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

1 that the PRODUCTS contained the LISTED CHEMICAL.

2 31. 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 the PRODUCTS.

5 32. 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 22
7 CCR §12601.

8 33. 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 34. 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 in the State of California.

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

19 36. 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 37. 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 38. 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 against DEFENDANTS.

28 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as set

1 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
5 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
6 violation alleged herein;

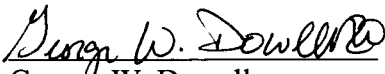
7 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
8 permanently enjoin DEFENDANTS, and each of them, from offering the PRODUCTS for sale or
9 use in California, without providing an identification of LISTED CHEMICAL in the PRODUCTS
10 as well as “clear and reasonable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

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15 Dated: December 13, 2006

15 Respectfully Submitted,
16 HIRST & CHANLER, LLP

17 
18 George W. Dowell
19 Attorneys for Plaintiff
20 WHITNEY R. LEEMAN
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