

ENDORSED  
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San Francisco County Superior Court

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**CASE MANAGEMENT CONFERENCE SET**

**JUL 13 2007 -9<sup>00</sup>AM**

6 Attorneys for Plaintiff  
MICHAEL RUGGIE

**DEPARTMENT 212**

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

13 MICHAEL RUGGIE,

14 Plaintiff,

15 v.

16 DRUGSTORE.COM, INC.; and Defendant  
17 DOES 1 through 200, inclusive,

18 Defendants.  
19

Case No. **CGC-07-460374**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6 *et seq.*;

(Other)

1 Plaintiff Michael Ruggie (“Plaintiff”), in the public interest, and based on  
2 information and belief and investigation of counsel, except for information based on personal  
3 knowledge, hereby makes the following allegations:

4 **INTRODUCTION**

5 1. This complaint seeks to remedy Defendants’ continuing failure to warn  
6 individuals in California that they are being exposed to lead, lead compounds, and lead acetate  
7 (collectively, “Lead”), chemicals known to the State of California to cause cancer and birth  
8 defects or other reproductive harm. Such exposures have occurred, and continue to occur,  
9 through the manufacture, distribution, sale and consumer use of Defendants’ hair coloring  
10 products that use Lead to return grey hair back to its natural color (the “Products”). Consumers  
11 are exposed to Lead when they use or otherwise handle the Products.

12 2. Under California’s Proposition 65, Health and Safety Code §25249.5 *et*  
13 *seq.*,<sup>1</sup> it is unlawful for businesses to knowingly and intentionally expose individuals in  
14 California to chemicals known to the State to cause cancer, birth defects, or other reproductive  
15 harm without providing clear and reasonable warnings to individuals prior to their exposure.  
16 Despite the fact that Defendants’ Products expose consumers to Lead, Defendants provide no  
17 warnings whatsoever about the carcinogenic or reproductive hazards associated with Lead  
18 exposure. Defendants’ conduct thus violates the warning provision of Proposition 65. Health &  
19 Safety Code §25249.6.

20 **PARTIES**

21 3. Plaintiff Michael Ruggie is a “person” within the meaning of Health &  
22 Safety Code §25249.11(a) and brings this enforcement action in the public interest pursuant to  
23 Health & Safety Code §25249.7(d).

24 4. Defendant Drugstore.com, Inc. (“Drugstore.com”) is a person in the course  
25 of doing business within the meaning of Health & Safety Code §25249.11. Drugstore.com  
26 manufactures, distributes and/or sells the Products for sale and use in California.

27 5. DOES 1 through 200 are each a person in the course of doing business

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<sup>1</sup> All statutory references herein are to California statutes, unless otherwise noted.

1 within the meaning of Health & Safety Code §25249.11. Defendant DOES 1 through 200 each  
2 manufacture, distribute and/or sell the Products for sale or use in California.

3 6. DOES 1 through 200 are each identified herein by fictitious names. The  
4 true names of DOES 1 through 200 are unknown to Plaintiff at this time. When the identities of  
5 DOES 1 through 200 are ascertained, the complaint shall be amended to reflect their true names.

6 7. Drugstore.com and DOES 1 through 200 are collectively referred to herein  
7 as "Defendants."

### 8 JURISDICTION AND VENUE

9 8. The Court has jurisdiction over this action pursuant to Health & Safety  
10 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The  
11 California Superior Court has jurisdiction over this action pursuant to California Constitution  
12 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all cases except  
13 those given by statute to other trial courts." The statutes under which this action is brought do  
14 not grant jurisdiction to any other trial court.

15 9. This Court has jurisdiction over the Defendants because each is a business  
16 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
17 intentionally avails itself of the California market through the sale, marketing or use of the  
18 Products in California and/or by having such other contacts with California so as to render the  
19 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
20 play and substantial justice.

21 10. Venue is proper in the San Francisco Superior Court because one or more  
22 of the violations arise in the County of San Francisco.

### 23 BACKGROUND FACTS

24 11. The People of the State of California have declared by initiative under  
25 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth  
26 defects, or other reproductive harm." Proposition 65, §1(b).

27 12. To effectuate this goal, Proposition 65 requires that individuals be  
28 provided with a "clear and reasonable warning" before being exposed to chemicals listed by the

1 State of California as known to cause cancer, birth defects, or other reproductive harm unless the  
2 business responsible for the exposure can prove that it fits within a statutory exemption. Health  
3 & Safety Code §25249.6 states, in pertinent part:

4 No person in the course of doing business shall knowingly and  
5 intentionally expose any individual to a chemical known to the  
6 state to cause cancer or reproductive toxicity without first giving  
clear and reasonable warning to such individual. . . .

7 13. On February 27, 1987, the State of California officially listed lead as a  
8 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
9 toxicant under three subcategories: "developmental reproductive toxicity," which means harm to  
10 the developing fetus, "female reproductive toxicity," which means harm to the female  
11 reproductive system, and "male reproductive toxicity," which means harm to the male  
12 reproductive system. 22 California Code of Regulations ("CCR") §12000(c). On February 27,  
13 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead  
14 became subject to the clear and reasonable warning requirement regarding reproductive toxins  
15 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

16 14. On January 1, 1988, the State of California officially listed lead acetate as  
17 a chemical known to cause cancer. 22 CCR §12000(b). On January 1, 1989, one year after it  
18 was listed as a chemical known to cause cancer, lead acetate became subject to the clear and  
19 reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR  
20 §12000(c); Health & Safety Code §§ 25249.10(b).

21 15. On October 1, 1992, the State of California officially listed lead and lead  
22 compounds as chemicals known to cause cancer. 22 CCR §12000(b). On October 1, 1993, one  
23 year after they were listed as chemicals known to cause cancer, lead and lead compounds became  
24 subject to the clear and reasonable warning requirement regarding carcinogens under Proposition  
25 65. 22 CCR §12000(c); Health & Safety Code §§ 25249.10(b).

26 16. Defendants' Products contain sufficient quantities of Lead such that  
27 individuals who handle the Products are exposed to Lead through the average use of the  
28 Products. Consumer exposures take place through dermal absorption directly through the skin

1 when consumers touch, handle, or apply the Products to their hair, or through hand to mouth  
2 contact after consumers touch or handle the Products or their hair after applying the Products.

3 17. Defendants both know and intend that the Products contain Lead. The  
4 Products typically use Lead as an active ingredient to change the user's grey hair back to its  
5 original color.

6 18. Defendants both know and intend that individuals will handle and use the  
7 Products thus exposing them to Lead.

8 19. Nevertheless, Defendants continue to expose consumers to Lead without  
9 providing clear and reasonable warnings regarding the carcinogenic or reproductive hazards of  
10 Lead.

11 20. Any person acting in the public interest has standing to enforce violations  
12 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
13 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
14 action within such time. Health & Safety Code §25249.7(d).

15 21. More than sixty days before naming each Defendant in this suit, Plaintiff  
16 provided a 60-Day Notice of Violation of Proposition 65 to the California Attorney General, the  
17 District Attorneys of every county in California, the City Attorneys of every California city with  
18 a population greater than 750,000 and to each of the named Defendants. Each of the Notices  
19 contained the information required by Health & Safety Code §25249.7(d) and 22 CCR  
20 §12903(b).

21 22. Plaintiff also sent a Certificate of Merit for each Notice of Violation to the  
22 California Attorney General, the District Attorneys of every county in California, the City  
23 Attorneys of every California city with a population greater than 750,000, and to each named  
24 Defendant. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each  
25 Certificate of Merit certified that Plaintiff's counsel: (1) has consulted with one or more persons  
26 with relevant and appropriate experience or expertise who reviewed facts, studies or other data  
27 regarding the exposures to Lead alleged in the Notice; and (2) based on the information obtained  
28 through such consultations, believes that there is a reasonable and meritorious case for a citizen



