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ENDORSED  
FILED  
ALAMEDA COUNTY

JAN - 9 2007

CLERK OF COURT  
By           M. Salcido           Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, Ph.D.,

Plaintiff,

v.

IMPERIAL TOY LLC; IMPERIAL TOY  
CORPORATION; LONGS DRUGS STORES  
CORPORATION; and DOES 1 through 150,  
inclusive,

Defendants.

Case No. \_\_\_\_\_

**RG07305519**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

*(Cal. Health & Safety Code §25249.6 et seq.)*

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.  
3 LEEMAN, Ph.D., in the public interest of the citizens of the State of California, to enforce the  
4 People's right to be informed of the presence of lead (a toxic chemical) found in certain cosmetic  
5 kits containing a combination of eye shadow, blush, and/or lipstick (or lip gloss) manufactured,  
6 distributed and/or sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn  
8 California citizens about their exposure to lead present in or on certain cosmetic kits containing a  
9 combination of eye shadow, blush, and/or lipstick (or lip gloss) that defendants manufacture,  
10 distribute and/or offer for sale to consumers throughout the State of California.

11 3. High levels of lead are commonly found in and on the eye shadow, blush, and/or  
12 lipstick (or lip gloss) contained in the cosmetic kits that defendants manufacture, distribute and/or  
13 offer for sale to consumers throughout the State of California.

14 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,  
15 California Health & Safety Code §25249.6 *et seq.* (hereinafter Proposition 65), "No person in the  
16 course of doing business shall knowingly and intentionally expose any individual to a chemical  
17 known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
18 warning to such individual..." (*Cal. Health & Safety Code §25249.6.*)

19 5. On February 27, 1987, California identified and listed lead as a chemical known to  
20 cause birth defects and other reproductive harm. Lead 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 February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*  
23 *§25249.8.*) Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

24 6. Defendants manufacture, distribute, and/or sell cosmetic kits containing a  
25 combination of eye shadow, blush, and/or lipstick (or lip gloss) containing lead including, but not  
26 limited to, *Petite Miss Make-Up Set, No. 7017 (#0 76666 07017 06)*, which contain excessive  
27 levels of the LISTED CHEMICAL. All such cosmetic kits containing of a combination of eye  
28 shadow, blush, and/or lipstick (or lip gloss) containing the LISTED CHEMICAL shall hereinafter

1 be referred to as the "PRODUCTS."

2 7. Studies show that pregnant woman subject to high levels of lead exposure face  
3 increased risks of spontaneous abortions, miscarriages and still births. But even low levels of lead  
4 exposure can adversely affect a pregnancy, causing premature birth, shortened gestation, decreased  
5 fetal growth and retarded fetal mental development. In a January 1997 report to Congress, United  
6 States Department of Health and Human Services ("HHS") noted that the developing nervous  
7 system of a fetus is particularly vulnerable to lead toxicity. Studies by HHS and the United States  
8 Agency for Toxic Substances and Disease Registry report that the lead in the maternal blood can  
9 readily cross the placenta barrier and enter the developing brain and nervous system of the fetus.

10 8. The allegations in this complaint are particularly significant where defendants  
11 cosmetic kits target women in their reproductive years.

12 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
13 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
14 PRODUCTS with the required warning regarding the health hazards of the LISTED CHEMICAL.  
15 (*Cal. Health & Safety Code §25249.7(a).*)

16 10. Plaintiff also seeks civil penalties against defendants for their violations of  
17 Proposition 65, as provided for by California Health & Safety Code §25249.7(b).

18 **PARTIES**

19 11. Plaintiff WHITNEY R. LEEMAN, Ph.D. is a citizen of the State of California who  
20 is dedicated to protecting the health of California citizens through the elimination or reduction of  
21 toxic exposures from consumer products, and brings this action in the public interest pursuant to  
22 California Health & Safety Code §25249.7.

23 12. Defendant IMPERIAL TOY LLC ("IMPERIAL") is a person doing business within  
24 the meaning of California Health & Safety Code §25249.11.

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

28

1           14. Defendant IMPERIAL TOY CORPORATION (“IMPERIAL CORP”) is a person  
2 doing business within the meaning of California Health & Safety Code §25249.11.

3           15. IMPERIAL CORP manufactures, distributes and/or offers the PRODUCTS for sale  
4 or use in the State of California or implies by its conduct that it manufactures, distributes and/or  
5 offers the PRODUCTS for sale or use in the State of California.

6           16. Defendant LONGS DRUGS STORES CORPORATION (“LONGS”) is a person  
7 doing business within the meaning of Health & Safety Code §25249.11.

8           17. LONGS offers the PRODUCTS for sale or use in the State of California or implies  
9 by its conduct that it offers the PRODUCTS for sale or use in the State of California.

10          18. Defendants DOES 1-50 (hereinafter MANUFACTURER DEFENDANTS) are each  
11 persons doing business within the meaning of California Health & Safety Code §25249.11.

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

16          20. Defendants DOES 51-100 (hereinafter DISTRIBUTOR DEFENDANTS) are each  
17 persons doing business within the meaning of California Health & Safety Code §25249.11.

18          21. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
19 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
20 the State of California.

21          22. Defendants DOES 101-150 (hereinafter RETAIL DEFENDANTS) are each persons  
22 doing business within the meaning of California Health & Safety Code §25249.11.

23          23. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
24 of California.

25          24. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
26 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code  
27 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of  
28 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When

1 ascertained, their true names shall be reflected in an amended complaint.

2 25. IMPERIAL, IMPERIAL CORP., LONGS, MANUFACTURER DEFENDANTS,  
3 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS, shall, where appropriate,  
4 collectively be referred to hereinafter as "DEFENDANTS."

5 **VENUE AND JURISDICTION**

6 26. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
7 Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because one  
8 or more instances of wrongful conduct occurred, and continues to occur, in the County of Alameda  
9 and/or because DEFENDANTS conducted, and continue to conduct, business in this County with  
10 respect to the PRODUCTS.

11 27. The California Superior Court has jurisdiction over this action pursuant to  
12 California Constitution Article VI, §10, which grants the Superior Court "original jurisdiction in all  
13 causes except those given by statute to other trial courts." The statute under which this action is  
14 brought does not specify any other basis of subject matter jurisdiction.

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

21 **FIRST CAUSE OF ACTION**

22 **(Violation of Proposition 65)**

23 29. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
24 Paragraphs 1 through 28, inclusive.

25 30. The citizens of the State of California have expressly stated in the Safe Drinking  
26 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*  
27 (Proposition 65) that they must be informed "about exposures to chemicals that cause cancer, birth  
28 defects and other reproductive harm." (*Cal. Health & Safety Code §25249.6.*)

1           31.     Proposition 65 states, “No person in the course of doing business shall knowingly  
2 and intentionally expose any individual to a chemical known to the state to cause cancer or  
3 reproductive toxicity without first giving clear and reasonable warning to such individual...” (*Id.*)

4           32.     On October 13, 2006, a sixty-day notice of violation, together with the requisite  
5 certificate of merit, was provided to IMPERIAL, IMPERIAL CORP, LONGS and various public  
6 enforcement agencies stating that as a result of IMPERIAL, IMPERIAL CORP., and LONGS’ sale  
7 of PRODUCTS, purchasers and users in the State of California were being exposed to the LISTED  
8 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
9 individual purchasers and users first having been provided with a “clear and reasonable warning”  
10 regarding such toxic exposures.

11           33.     DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
12 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
13 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
14 violation of California Health & Safety Code §25249.6 has continued to occur beyond IMPERIAL,  
15 IMPERIAL CORP, and LONGS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff  
16 further alleges and believes that such violations will continue to occur into the future.

17           34.     After receipt of the claims asserted in the sixty-day notice of violation, the  
18 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause  
19 of action against IMPERIAL, IMPERIAL CORP, and LONGS under Proposition 65.

20           35.     The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
21 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
22 limits.

23           36.     DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
24 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
25 CHEMICAL.

26           37.     The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to  
27 expose individuals to the LISTED CHEMICAL through ingestion, inhalation, ocular absorption  
28 and/or dermal contact during the reasonably foreseeable use of the PRODUCTS.

1           38.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
2 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
3 by 22 CCR §12601(b).

4           39.     DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
5 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion,  
6 inhalation, ocular absorption and/or dermal contact.

7           40.     DEFENDANTS, and each of them, intended that such exposures to the LISTED  
8 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their  
9 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use  
10 of PRODUCTS to individuals in the State of California.

11          41.     DEFENDANTS failed to provide a “clear and reasonable warning” to those  
12 consumers and/or other individuals in the State of California who were or who could become  
13 exposed to the LISTED CHEMICAL through ingestion, inhalation, ocular absorption and/or  
14 dermal contact during the reasonably foreseeable use of the PRODUCTS.

15          42.     Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
16 directly by California voters, individuals exposed to the LISTED CHEMICAL through ingestion,  
17 inhalation, ocular absorption and/or dermal contact resulting from the reasonably foreseeable use  
18 of the PRODUCTS, sold by DEFENDANTS without “clear and reasonable warning,” have  
19 suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy or  
20 adequate remedy at law.

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

24          44.     As a consequence of the above-described acts, California Health & Safety Code  
25 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
26 DEFENDANTS.

27          45.     Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as  
28 set forth hereinafter.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

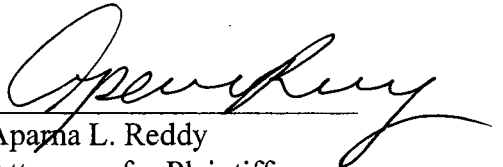
6 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,  
8 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and  
9 reasonable warnings” as defined by 22 CCR §12601, as to the harms associated with exposures to  
10 the LISTED CHEMICAL;

11 3. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

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

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15 Dated: January 9, 2007

Respectfully Submitted,  
HIRST & CHANLER, LLP

17   
18 Aparna L. Reddy  
19 Attorneys for Plaintiff  
20 WHITNEY R. LEEMAN, Ph.D.