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ENDORSED
FILED
ALAMEDA COUNTY

OCT 15 2007

CLERK OF THE SUPERIOR COURT
By C. PITTS
Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10

11
12 WHITNEY R. LEEMAN, Ph.D.,

13 Plaintiff,

14 v.

15 ROSS STORES, INC.; and DOES 1 through
16 150, inclusive,

17 Defendants.

No.

RG07351051

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

18
19 WHITNEY R. LEEMAN, by and through her counsel, on behalf of herself, on behalf of all
20 others similarly situated and on behalf of the general public, hereby alleges as follows:

21 **NATURE OF THE ACTION**

22 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
23 LEEMAN, on behalf of citizens of the State of California, to enforce each citizen's right to be
24 informed of the presence of and nature of toxic chemicals in consumer goods.

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

1 3. Lead is a chemical that is identified in Title 22, California Code of Regulations
2 (“CCR”) §12000 that is known to the State of California to cause birth defects and other
3 reproductive harm. Lead shall hereafter be referred to as the “LISTED CHEMICAL.” The
4 consumer products containing the LISTED CHEMICAL, and for which defendants are
5 responsible, are: cosmetic kits containing a combination of eye shadow, eye liner and/or lipstick
6 (or lip gloss), including, but not limited to, *Color Boutique By Classically Me Gift Set, 603 D1111*
7 *C5934*. All such consumer products containing the LISTED CHEMICAL shall hereafter be
8 referred to as the “PRODUCTS.”

9 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
10 Health & Safety Code §25249.6 *et seq.*¹ (hereafter “Proposition 65”), “No person in the course of
11 doing business shall knowingly and intentionally expose any individual to a chemical known to the
12 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
13 such individual....”

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

18 6. Lead is known as a reproductive toxin that can cause birth defects, serious
19 developmental disorders in infants and children, and harm to the male and female reproductive
20 systems. The human body can neither use nor metabolize lead. Accordingly, whatever lead enters
21 the body is stored by it, mainly in bones and teeth. Studies by the United States Department of
22 Health and Human Services (“HHS”) and the United States Agency for Toxic Substances and
23 Disease Registry (“ATSDR”) report that lead stored primarily in pregnant woman's bones is
24 released into her blood stream during pregnancy, and that the lead in the maternal blood can
25 readily cross the placenta barrier and enter the developing brain and nervous system of the fetus.
26 As a result, the studies conclude, accumulated lead in a pregnant woman is likely to be transferred

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

1 to the growing fetus.

2 7. The allegations in this complaint are particularly significant to the health of women
3 in their reproductive years, as cosmetics target this large population of women. Studies show that
4 pregnant woman subject to high levels of lead exposure face increased risks of spontaneous
5 abortions, miscarriages and still births. But even low levels of lead exposure can adversely affect a
6 pregnancy, causing premature birth, shortened gestation, decreased fetal growth and retarded fetal
7 mental development. In a January 1997 report to Congress, HHS noted that the developing
8 nervous system of a fetus is particularly vulnerable to lead toxicity. Furthermore, studies have
9 shown that the amount of lead released from a mother's bones is greatest during the third trimester
10 of pregnancy and lactation; as such a newborn can be exposed to lead through the mother's milk.

11 8. Defendants' failures to provide proper mandatory warnings about exposure to the
12 LISTED CHEMICAL in conjunction with the sale of the PRODUCTS is a violation of Proposition
13 65 and subjects defendants to enjoinder of such conduct as well as civil penalties for each such
14 violation.

15 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
16 and permanent injunctive relief to compel defendants to provide purchasers of the PRODUCTS
17 with the appropriate Proposition 65 warning regarding the health hazards of the LISTED
18 CHEMICAL.

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

21 **PARTIES**

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

26 12. Defendant ROSS STORES, INC. ("ROSS") is a person doing business within the
27 meaning of Health & Safety Code §25249.11.

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

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

6 15. 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
9 manufacturing, one or more of the PRODUCTS for sale, consumption or use in the State of
10 California.

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

13 17. 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 18. Defendants DOES 101-150 (hereafter "RETAIL DEFENDANTS") are each
17 persons doing business within the meaning of Health & Safety Code §25249.11.

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

20 20. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
21 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code
22 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of
23 the 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 21. ROSS, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
26 RETAIL DEFENDANTS, and Defendants DOES 1 through 150 shall, where appropriate,
27 collectively be referred to hereafter as "DEFENDANTS".
28

1 **VENUE AND JURISDICTION**

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

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

11 24. 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 personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

19 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 24, inclusive.

21 26. 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 §25249.6, *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 27. 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
27 cancer or reproductive toxicity without first giving clear and reasonable warning to such
28 individual....”

1 28. Based on information and good faith belief, plaintiff alleges that, at all times
2 relevant to this Complaint, DEFENDANTS have engaged in the sales of the PRODUCTS in
3 violation of Health & Safety Code §25249.6, *et seq.*, and that DEFENDANTS' offensive sale of
4 the PRODUCTS has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day
5 Notice of Violation. Plaintiff also alleges and believes that such violations will continue to occur
6 into the future.

7 29. On October 13, 2006, a "60-Day Notice" of Proposition 65 violations containing a
8 Certificate of Merit pursuant to California Health & Safety Code §25249.7(d)(1) was provided to
9 public enforcement agencies and to ROSS STORES, INC., stating that exposures to the LISTED
10 CHEMICAL were occurring in the State of California from the reasonably foreseeable uses of the
11 PRODUCTS, without the individual purchasers and users first having been provided with a "clear
12 and reasonable warning" regarding such exposure.

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

16 31. At all times relevant to this action, the PRODUCTS contained the LISTED
17 CHEMICAL.

18 32. At all times relevant to this action, the DEFENDANTS knew or should have known
19 that the PRODUCTS contained the LISTED CHEMICAL.

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

23 34. The normal and reasonably foreseeable use of the PRODUCTS has caused and
24 continues to cause an exposure to the LISTED CHEMICAL, as such exposure is defined by 22
25 CCR §12601.

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

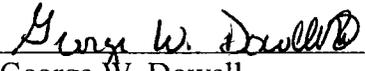
1 plaintiff shall specify in further application to the Court;

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

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

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5 Dated: October 9, 2007

Respectfully Submitted,
HIRST & CHANLER, LLP

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8 George W. Dowell
9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, Ph.D.
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