

**ENDORSED  
FILED**  
San Francisco County Superior Court

APR 26 2007

**GORDON PARK-LI, Clerk**

BY: PARAMNATT  
Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
10 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 NUGGET MARKET, INC.; and DOES 1  
through 150, inclusive,

17 Defendants.  
18

Case No. CGC-07-462826

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**CASEMANAGEMENT CONFERENCE SET**

19 SEP 28 2007 -9<sup>00</sup>AM

20 DEPARTMENT 212  
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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 or on certain (a)  
5 glass soda bottles with colored artwork or designs on the exterior surface; (b) oil bottles and other  
6 glass containers intended for the consumption of food or beverages with colored artwork or  
7 designs on the exterior; and (c) mugs and other ceramic containers intended for the consumption of  
8 food or beverages with colored artwork or designs on the exterior sold by defendants in California.

9 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn  
10 California citizens about their exposure to lead present in or on certain (a) glass soda bottles with  
11 colored artwork or designs on the exterior surface; (b) oil bottles and other glass containers  
12 intended for the consumption of food or beverages with colored artwork or designs on the exterior;  
13 and (c) mugs and other ceramic containers intended for the consumption of food or beverages with  
14 colored artwork or designs on the exterior that defendants offer for sale to consumers in the State  
15 of California.

16 3. High levels of lead are commonly found in and on the artwork or designs on the  
17 exterior of the of the glass soda bottles, oil bottles and mugs that defendants offer for sale to  
18 consumers at their retail outlets in the State of California.

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

24 5. On February 27, 1987, California identified and listed lead as a chemical known to  
25 cause birth defects and other reproductive harm. Lead became subject to the warning requirement  
26 one year later and was therefore subject to the "clear and reasonable warning" requirements of  
27 Proposition 65, beginning on February 27, 1988. (*22 CCR §12000(c); Cal. Health & Safety Code*  
28 *§25249.8.*) Lead shall hereinafter be referred to as the "LISTED CHEMICAL."



1           12. Defendant STILLE CO. ("STILLE") is a person doing business within the meaning  
2 of California Health & Safety Code §25249.11.

3           13. STILLE offers the PRODUCTS for sale or use in the State of California or implies  
4 by its conduct that it offers the PRODUCTS for sale or use in the State of California.

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

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

11           16. Defendants DOES 51-100 (hereinafter DISTRIBUTOR DEFENDANTS) are each  
12 persons doing business within the meaning of California 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 for sale or use in  
15 the State of California.

16           18. Defendants DOES 101-150 (hereinafter RETAIL DEFENDANTS) are each persons  
17 doing business within the meaning of California 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. NUGGET, STILLE, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
26 DEFENDANTS, RETAIL DEFENDANTS, shall, where appropriate, collectively be referred to  
27 hereinafter as "DEFENDANTS."  
28

1 **VENUE AND JURISDICTION**

2 22. Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
3 Civil Procedure §§394, 395, 395.5 because this Court is a court of competent jurisdiction, because  
4 one or more instances of wrongful conduct occurred, and continues to occur, in the County of San  
5 Francisco and/or because DEFENDANTS conducted, and continue to conduct, business in this  
6 County with 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, California Health & Safety Code §25249.6, *et seq.*  
23 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer, birth  
24 defects and other reproductive harm.” (*Cal. Health & Safety Code §25249.6.*)

25 27. Proposition 65 states, “No person in the course of doing business shall knowingly  
26 and intentionally expose any individual to a chemical known to the state to cause cancer or  
27 reproductive toxicity without first giving clear and reasonable warning to such individual....” (*Id.*)  
28

1           28.     On July 14, 2006, a sixty-day notice of violation, together with the requisite  
2 certificate of merit, was provided to NUGGET, STILLE and various public enforcement agencies  
3 stating that as a result of NUGGET and STILLE's sale of PRODUCTS, purchasers and users in  
4 the State of California were being exposed to the LISTED CHEMICAL resulting from the  
5 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first  
6 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

7           29.     On November 7, 2006, a supplemental sixty-day notice of violation, together with  
8 the requisite certificate of merit, was provided to NUGGET, STILLE and various public  
9 enforcement agencies stating that as a result of NUGGET and STILLE's sale of PRODUCTS,  
10 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL  
11 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
12 purchasers and users first having been provided with a "clear and reasonable warning" regarding  
13 such toxic exposures.

14           30.     DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
15 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
16 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
17 violation of California Health & Safety Code §25249.6 has continued to occur beyond NUGGET  
18 and STILLE's receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and  
19 believes that such violations will continue to occur into the future.

20           31.     After receipt of the claims asserted in the sixty-day notice of violation, the  
21 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause  
22 of action against NUGGET and STILLE under Proposition 65.

23           32.     The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
24 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
25 limits.

26           33.     DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
27 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
28 CHEMICAL.

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

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

7           36.     DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
8 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion,  
9 inhalation, ocular absorption and/or dermal contact.

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

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

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

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

27          41.     As a consequence of the above-described acts, California Health & Safety Code  
28 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against

1 DEFENDANTS.

2 42. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as  
3 set forth hereinafter.

4 **PRAYER FOR RELIEF**

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

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

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

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

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

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18 Dated: April 26, 2007

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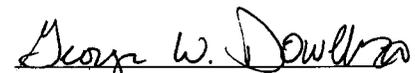
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Respectfully Submitted,  
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Attorneys for Plaintiff  
WHITNEY R. LEEMAN, Ph.D.