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**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUL 12 2007

CLERK OF THE SUPERIOR COURT  
By E. ROBINSON Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12  
13 WHITNEY R. LEEMAN, Ph.D.

14 Plaintiff,

15 v.

16 RALEY'S dba NOB HILL FOODS; and DOES  
17 1 through 150, inclusive,

18 Defendants.

Case No. RG07 335317

**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 LEEMAN  
3 Ph.D., in the public interest of the citizens of the State of California, to enforce the People’s right  
4 to be informed of the presence of lead (a toxic chemical) found in glass soda bottles with colored  
5 artwork or designs on the exterior manufactured, distributed and/or sold by defendants in  
6 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 glass soda bottles with  
9 colored artwork or designs on the exterior that defendants manufacture, distribute and/or offer for  
10 sale to consumers throughout the State of California.

11 3. High levels of lead are commonly found in the colored artwork or designs in and/or  
12 on glass soda bottles that defendants manufacture, distribute and/or offer for sale to consumers  
13 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.* (hereafter “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 hereafter be referred to as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute and/or offer for sale glass soda bottles with  
25 colored artwork or designs on the exterior including, but not limited to, *Faygo Original Black*  
26 *Raspberry, 16 fl. oz. (#0 73800 00492 9)*, which contain the LISTED CHEMICAL in a quantity  
27 that is above the limit set forth in Health & Safety Code §25249.10(c). All such glass soda bottles  
28 with colored artwork or designs on the exterior containing the LISTED CHEMICAL shall hereafter

1 be referred to as the "PRODUCTS."

2 7. Defendants' failure to warn consumers about their exposure to the LISTED  
3 CHEMICAL in conjunction with defendants' manufacture, distribution and/or sale of the  
4 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such  
5 conduct, as well as civil penalties for each such violation.

6 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
7 and permanent injunctive relief to compel defendants to provide employees, purchasers or users of  
8 the PRODUCTS with the required warning regarding the health hazards that may result from  
9 exposure to the LISTED CHEMICAL. (*Cal. Health & Safety Code §25249.7(a).*)

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

12 **PARTIES**

13 10. Plaintiff WHITNEY LEEMAN is a citizen of the State of California who is  
14 dedicated to protecting the health of California citizens through the elimination or reduction of  
15 toxic exposures from consumer products, and brings this action in the public interest pursuant to  
16 California Health & Safety Code §25249.7.

17 11. Defendant RALEY'S dba NOB HILL FOODS ("RALEY'S") is a person doing  
18 business within the meaning of California Health & Safety Code §25249.11.

19 12. RALEY'S manufactures, distributes and/or offers the PRODUCTS in the State of  
20 California or implies by its conduct that it manufactures, distributes and/or offers the PRODUCTS  
21 for sale or use in the State of California.

22 13. Defendants DOES 1-50 (hereafter "MANUFACTURER DEFENDANTS") are each  
23 persons doing business within the meaning of California Health & Safety Code §25249.11.

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

28 15. Defendants DOES 51-100 (hereafter "DISTRIBUTOR DEFENDANTS") are each

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

2 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
3 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
4 the State of California.

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

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

9 19. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
10 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code  
11 of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges, that each of  
12 the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When  
13 ascertained, their true names shall be reflected in an amended complaint.

14 20. RALEY'S, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
15 DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to  
16 hereafter as "DEFENDANTS".

17 **VENUE AND JURISDICTION**

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

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

27 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
28 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or

1 association that either is a citizen of the State of California, has sufficient minimum contacts in the  
2 State of California, or otherwise purposefully avails itself of the California market.  
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California  
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65)**

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

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

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

16 27. On May 4, 2007, a sixty-day notice of violation, together with the requisite  
17 certificate of merit, was provided to RALEY'S and various public enforcement agencies stating  
18 that as a result of RALEY'S manufacture, distribution and/or sale of the PRODUCTS, employees,  
19 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL  
20 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
21 employees, purchasers and users first having been provided with a "clear and reasonable warning"  
22 regarding such toxic exposures.

23 28. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
24 the PRODUCTS for sale or use in violation of California Health & Safety Code §25249.6 and  
25 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
26 violation of California Health & Safety Code §25249.6 has continued to occur beyond RALEY'S  
27 receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such  
28 violations will continue to occur into the future.

1           29.     After receipt of the claims asserted in the sixty-day notice of violation, the  
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause  
3 of action against RALEY'S under Proposition 65.

4           30.     The PRODUCTS manufactured, distributed and/or offered for sale or use in  
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
6 limits.

7           31.     DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
8 distributed and/or offered for sale or use by DEFENDANTS in California contained the LISTED  
9 CHEMICAL.

10          32.     The normal and reasonably foreseeable use of the PRODUCTS has caused and  
11 continues to cause employee and consumer exposures to the LISTED CHEMICAL, as such  
12 exposure is defined by 22 CCR §12601(b).

13          33.     The 60-Day Notice complied with 8 CCR §338 and was served to public  
14 enforcement agencies with the statement set forth in 8 CCR §338(b). In addition, the mailing  
15 envelopes of the notice that were served upon the Public Prosecutors prominently stated "Hazard  
16 Communication Standard/ Proposition 65 Supplemental Enforcement Matter." in compliance with  
17 8 CCR §338(f).

18          34.     DEFENDANTS have engaged in the manufacture, distribution and offering of the  
19 PRODUCTS for sale and use in violation of Health and Safety Code §25249.6. DEFENDANTS'  
20 manufacture, distribution and sale of the PRODUCTS have continued to occur following  
21 DEFENDANTS' receipt of a 60-day Notice of Violation from plaintiff. Plaintiff further alleges  
22 and believes that such violations will continue to occur in the future.

23          35.     DEFENDANTS' actions, in addition to exposing consumers, have also exposed  
24 their employees, to the LISTED CHEMICAL without appropriate warnings, including those  
25 provided in the general hazard communication requirements of the California Occupational Safety  
26 and Health Administration set forth in 8 CCR §5194.

27          36.     Plaintiff is informed and believes that at all times relevant to this matter RALEY'S  
28 has been an employer as defined in 8 CCR §5194(c).

1           37. Plaintiff is further informed and believes that at all times relevant to this matter  
2 RALEY'S has not provided employees at its store locations with the appropriate health hazard  
3 warnings as required by 8 CCR §5194(f).

4           38. Employees are exposed at the California business locations of the DEFENDANTS  
5 where the PRODUCTS are, by way of example but not limitation, consumed, packed, unpacked,  
6 labeled, arranged, displayed, cleaned, transferred, stocked, stored or otherwise handled.

7           39. These tasks cause employee exposures directly or indirectly though the routine  
8 touching of the parts or portions of the PRODUCTS containing readily available surface amounts  
9 of the LISTED CHEMICAL.

10          40. Additionally, exposures can occur through the routine touching and ingesting of  
11 other materials that are contaminated with the LISTED CHEMICAL from the PRODUCTS as a  
12 result of these tasks.

13          41. 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 of Violation.

16          42. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact  
18 and ingestion.

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

23          44. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
24 consumers or other individuals in the State of California who were or who could become exposed  
25 to the LISTED CHEMICAL through dermal contact or ingestion during the reasonably foreseeable  
26 use of the PRODUCTS.

27          45. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
28 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal

1 contact and ingestion resulting from the reasonably foreseeable use of the PRODUCTS,  
2 manufactured, distributed and/or sold by DEFENDANTS without "clear and reasonable warning,"  
3 have suffered, and continue to suffer, irreparable harm, for which harm they have no plain, speedy  
4 or adequate remedy at law.

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

8 47. As a consequence of the above-described acts, California Health & Safety Code  
9 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
10 DEFENDANTS.

11 48. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as  
12 set forth hereafter.

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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;

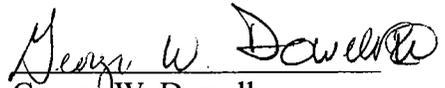
6 2. That the Court, pursuant to California Health & Safety Code §25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,  
8 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and  
9 reasonable warnings” as defined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

13  
14 Dated: July 12, 2007

Respectfully Submitted,  
HIRST & CHANLER, LLP

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17 George W. Dowell  
18 Attorneys for Plaintiff  
19 WHITNEY LEEMAN, Ph.D.  
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