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**ENDORSED  
FILED  
ALAMEDA COUNTY**

FEB 22 2008

CLERK OF THE SUPERIOR COURT  
By Robinson Deputy

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA  
14 UNLIMITED CIVIL JURISDICTION  
15

16 WHITNEY R. LEEMAN, Ph.D.,

17 Plaintiff,

18 v.

19 NEW MILANI GROUP, INC.; and DOES 1  
20 through 150; inclusive;

21 Defendants.

Case No. RG08 372758

**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 lip liners  
5 manufactured, distributed and/or sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn  
7 the citizens of California about their exposure to lead present in or on lip liners that defendants  
8 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

9 3. High levels of lead are commonly found in and on the lip liners that defendants  
10 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

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

16 5. On February 27, 1987, California identified and listed lead as a chemical known to  
17 cause birth defects and other reproductive harm. Lead became subject to the warning requirement  
18 one year later and was therefore subject to the "clear and reasonable warning" requirements of  
19 Proposition 65, beginning on February 27, 1988. (*22 CCR § 12000(c); Cal. Health & Safety Code*  
20 *§ 25249.8.*) Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

21 6. Defendants manufacture, distribute, and/or sell lip liners containing lead including,  
22 but not limited to, *Milani Lip Liner Pencil, Hot Chocolate (#7 17489 94405 2)*, which contain  
23 excessive levels of the LISTED CHEMICAL. All such lip liners containing the LISTED  
24 CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

25 7. Studies show that pregnant woman subject to high levels of lead exposure face  
26 increased risks of spontaneous abortion and still birth. But even at low levels, lead exposure can  
27 adversely affect a pregnancy, causing premature birth, shortened gestation, decreased fetal growth  
28 and retarded fetal mental development. In a January 1997 report to Congress, United States

1 Department of Health and Human Services (“HHS”) noted that the developing nervous system of a  
2 fetus is particularly vulnerable to lead toxicity. Studies by HHS and the United States Agency for  
3 Toxic Substances and Disease Registry report that the lead in the maternal blood can readily cross  
4 the placenta barrier and enter the developing brain and nervous system of the fetus.

5 8. The allegations in this complaint are particularly significant where defendants’  
6 PRODUCTS target women in their reproductive years.

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

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

13 **PARTIES**

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

18 12. Defendant NEW MILANI GROUP, INC. (hereinafter MILANI) is a person doing  
19 business within the meaning of California Health & Safety Code § 25249.11.

20 13. MILANI manufactures, distributes and/or offers the PRODUCTS for sale or use in  
21 the State of California or implies by its conduct that it manufactures, distributes and/or offers the  
22 PRODUCTS for sale or use in the State of California.

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

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





1 violations will continue to occur into the future.

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

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

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

11 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to  
12 expose individuals to the LISTED CHEMICAL through ingestion and/or dermal contact during the  
13 reasonably foreseeable use of the PRODUCTS.

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

17 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
18 the PRODUCTS would expose individuals to the LISTED CHEMICAL through ingestion an/or  
19 dermal contact.

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

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

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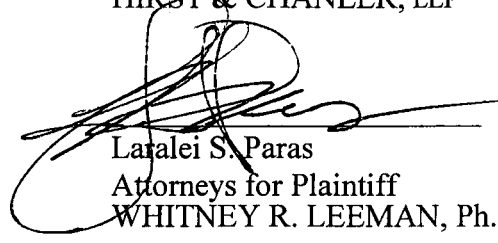


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- 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: February 21, 2008

Respectfully Submitted,  
HIRST & CHANLER, LLP



Laralei S. Paras  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN, Ph.D.