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**ENDORSED
FILED
ALAMEDA COUNTY**
APR 18 2008
CLERK OF THE SUPERIOR COURT
By ~~S. Halerombe~~ Deputy

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

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

13 Plaintiff,

14 v.

15 ZALAN PRODUCTS, INC.; and DOES 1
through 150, inclusive;

16 Defendants.
17

Case No. RG 08382738

**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 cosmetic kits
5 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 the citizens of California about their exposure to lead present in 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. Significant levels of lead are commonly found in the cosmetic kits containing a
12 combination of eye shadow, blush, and/or lipstick (or lip gloss) that defendants manufacture,
13 distribute and/or 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
18 reasonable 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, *Zalan Make Up Kit Gift Set, Item #9010 (#0 18062 09010 5)*, which contain excessive
27 levels of the LISTED CHEMICAL. All such cosmetic kits containing a combination of eye
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1 shadow, blush, and/or lipstick (or lip gloss) containing the LISTED CHEMICAL shall hereinafter
2 be referred to as the "PRODUCTS."

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

11 8. The allegations in this complaint are particularly significant where defendants'
12 PRODUCTS target women in their reproductive years.

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

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

19 **PARTIES**

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

24 12. Defendant ZALAN PRODUCTS, INC. ("ZALAN") is a person in the course of
25 doing business within the meaning of California Health & Safety Code § 25249.11.

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

1 14. Defendants DOES 1-50 (hereinafter MANUFACTURER DEFENDANTS) are each
2 persons in the course of doing business within the meaning of California Health & Safety Code §
3 25249.11.

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

8 16. Defendants DOES 51-100 (hereinafter DISTRIBUTOR DEFENDANTS) are each
9 persons in the course of doing business within the meaning of California Health & Safety Code §
10 25249.11.

11 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
12 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
13 the State of California.

14 18. Defendants DOES 101-150 (hereinafter RETAIL DEFENDANTS) are each persons
15 in the course of doing business within the meaning of California Health & Safety Code
16 § 25249.11.

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

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

24 21. ZALAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
25 RETAIL DEFENDANTS, shall, where appropriate, collectively be referred to hereinafter as
26 “DEFENDANTS.”

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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, California Health & Safety Code § 25249.5, *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.*)
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1 28. On November 19, 2007, a sixty-day notice of violation, together with the requisite
2 certificate of merit, was provided to ZALAN and various public enforcement agencies stating that
3 as a result of ZALAN's sale of the PRODUCTS, purchasers and users in the State of California
4 were being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of
5 the PRODUCTS, without the individual purchasers and users first having been provided with a
6 "clear and reasonable warning" regarding such toxic exposures.

7 29. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
8 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
9 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
10 violation of California Health & Safety Code § 25249.6 has continued to occur beyond ZALAN's
11 receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and believes that such
12 violations will continue to occur into the future.

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

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

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

22 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
23 to expose individuals to the LISTED CHEMICAL through inhalation, ingestion, dermal contact
24 and/or ocular contact during the reasonably foreseeable use of the PRODUCTS.

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

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1 35. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
2 the PRODUCTS would expose individuals to the LISTED CHEMICAL through inhalation,
3 ingestion, dermal contact and/or ocular contact.

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

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

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

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

21 40. As a consequence of the above-described acts, California Health & Safety Code
22 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
23 DEFENDANTS.

24 41. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
25 set forth hereinafter.

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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;

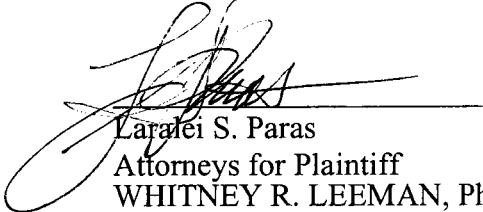
6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
8 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
9 reasonable warnings” as defined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

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14 Dated: April 18, 2008

15 Respectfully Submitted,
16 HIRST & CHANLER, LLP

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