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FILED

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K. TORRES, CLERK OF COURT
COUNTY OF CONTRA COSTA, CA

By: C. Green, Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF CONTRA COSTA
13 UNLIMITED CIVIL JURISDICTION

14 WHITNEY R. LEEMAN, Ph.D.,

15 Plaintiff,

16 v.

17 SHIMS BARGAIN, INC.; and DOES 1
18 through 150, inclusive;

19 Defendants.

Case No. **C 08 - 01873**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT 09 BY FAX

20 **NATURE OF THE ACTION**

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23 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
24 LEEMAN, Ph.D., in the public interest of the citizens of the State of California, to enforce the
25 People's right to be informed of the presence of lead (a toxic chemical) found in cosmetic kits
26 manufactured, distributed and/or sold by defendants in California.

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1 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to warn
2 the citizens of California about their exposure to lead present in cosmetic kits that defendants
3 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

4 3. High levels of lead are commonly found in the cosmetic kits that defendants
5 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

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

11 5. On February 27, 1987, California identified and listed lead as a chemical known to
12 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
13 one year later and was therefore subject to the "clear and reasonable warning" requirements of
14 Proposition 65, beginning on February 27, 1988. (*22 CCR § 12000(c); Cal. Health & Safety Code*
15 *§ 25249.8.*) Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

16 6. Defendants manufacture, distribute, and/or cosmetic kits containing a combination
17 of eye shadow and/or blush containing lead including, but not limited to, *Lovely Girl Beauty*
18 *Combination, No. 25163F (#6 03076 32050 0)*, which contain excessive levels of the LISTED
19 CHEMICAL. All such cosmetic kits containing the LISTED CHEMICAL shall hereinafter be
20 referred to as the "PRODUCTS."

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

2 8. The allegations in this complaint are particularly significant where defendants'
3 PRODUCTS target children, teenagers and women in their reproductive years.

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

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

10 **PARTIES**

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

15 12. Defendant SHIMS BARGAIN, INC. (hereinafter SHIMS) is a person doing
16 business within the meaning of California Health & Safety Code § 25249.11.

17 13. SHIMS manufactures, distributes and/or offers the PRODUCTS for sale or use in
18 the State of California or implies by its conduct that it manufactures, distributes and/or offers the
19 PRODUCTS for sale or use in the State of California.

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

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

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

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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 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
8 Paragrap5hs 1 through 24, inclusive.

9 26. 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, birth
12 defects and other reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

13 27. 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 28. On November 19, 2007, a sixty-day notice of violation, together with the requisite
17 certificate of merit, was provided to SHIMS and various public enforcement agencies stating that
18 as a result of SHIMS' sale of the PRODUCTS, purchasers and users in the State of California were
19 being exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the
20 PRODUCTS, without the individual purchasers and users first having been provided with a "clear
21 and reasonable warning" regarding such toxic exposures.

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

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1 30. 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 SHIMS under Proposition 65.

4 31. 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 32. 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 33. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as
11 to expose individuals to the LISTED CHEMICAL through ingestion and/or dermal contact during
12 the reasonably foreseeable use of the PRODUCTS.

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

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

19 36. 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 the manufacture, distribution and/or offer for sale or use
22 of PRODUCTS to individuals in the State of California.

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

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

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

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

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

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

11 **PRAAYER FOR RELIEF**

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

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

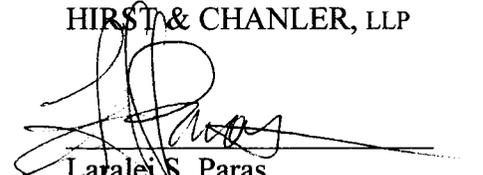
16 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
17 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
18 distributing or offering the PRODUCTS for sale or use in California, without providing “clear and
19 reasonable warnings” as defined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

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

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

23 Dated: July 21, 2008

24 Respectfully Submitted,
HIRSH & CHANLER, LLP

25 
26 Laralei S. Paras
27 Attorneys for Plaintiff
28 WHITNEY R. LEEMAN, Ph.D.