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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

AUG 30 2013

CLERK OF THE COURT  
BY: MARYANN MORAN  
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 WHITNEY R. LEEMAN, PH.D.,

15 Plaintiff,

16 v.

17 DEAN DISTRIBUTORS, INC.; and DOES 1-  
18 150, inclusive,

19 Defendants.

20 Case No. \_\_\_\_\_

CGC 13-533956

21 **COMPLAINT FOR CIVIL PENALTIES  
22 AND INJUNCTIVE RELIEF**

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

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By Fax

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 a carcinogenic chemical known as  
5 4-Methylimidazole (“4-MEI”) found in certain food extracts, flavors, and colorings sold by  
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn  
8 California citizens about the risk of exposure to 4-MEI, a cancer-causing chemical present in food  
9 extracts, flavors, and colorings manufactured, distributed, and offered for sale or use to consumers  
10 throughout the State of California.

11 3. Detectable levels of 4-MEI are commonly found in food extracts, flavors, and  
12 colorings that defendants manufacture, distribute, and offer for sale to consumers throughout the  
13 State of California.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
15 Health and Safety Code § 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing  
16 business shall knowingly and intentionally expose any individual to a chemical known to the state  
17 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
18 individual . . .” Health & Safety Code § 25249.6.

19 5. Pursuant to Proposition 65, on January 7, 2011, California identified and listed 4-MEI  
20 as a chemical known to cause cancer. 4-MEI became subject to the “clear and reasonable warning”  
21 requirements of the act one year later on January 7, 2012. Cal. Code Regs. tit. 27, § 27001(b);  
22 Health & Safety Code §§ 25249.8 & 25249.10(b).

23 6. Defendants manufacture, distribute, sell and offer for sale food extracts, flavors, and  
24 colorings containing 4-MEI at levels that require a warning under Proposition 65 including, but not  
25 limited to, the *Sierra Brand Premium Products Imitation Maple Flavor, #011031 (#8 40825 00122*  
26 *2)*. All such food extracts, flavors, and colorings containing 4-MEI are referred to collectively  
27 hereinafter as “PRODUCTS.”

1 7. Defendants' failure to warn consumers and other individuals and workers  
2 (specifically those not subject to California's Occupational Health Act, Labor Code section 6300 et  
3 seq. or exempted under the out-of-state manufacturer rule) in the state of California about their  
4 exposure to 4-MEI in conjunction with defendants' sale of the PRODUCTS is a violation of  
5 Proposition 65, and subjects defendants to enjoinder of such conduct as well as civil penalties for  
6 each violation. Health & Safety Code § 25249.7(a) & (b)(1).

7 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
8 permanent injunctive relief to compel defendants to provide purchasers or consumers of the  
9 PRODUCTS with the required warning regarding the health hazards of 4-MEI. Health & Safety  
10 Code § 25249.7(a).

11 9. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil penalties  
12 against defendants for their violations of Proposition 65.

13 **PARTIES**

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

18 11. Defendant DEAN DISTRIBUTORS, INC. ("DEAN") is a person in the course of  
19 doing business within the meaning of Health and Safety Code § 25249.11(b).

20 12. DEAN offers the PRODUCTS for sale in the state of California without a "clear and  
21 reasonable warning."

22 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons in  
23 the course of doing business within the meaning of Health and Safety Code section 25249.11.

24 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and  
25 manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and  
26 manufacture one or more of the PRODUCTS offered for sale or use in the State of California.  
27

1 15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in  
2 the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

6 17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the  
7 course of doing business within the meaning of Health and Safety Code section 25249.11.

8 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State  
9 of California.

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

15 20. DEAN, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and  
16 RETAILER DEFENDANTS are collectively referred to herein as "DEFENDANTS."

17 **VENUE AND JURISDICTION**

18 21. Venue is proper in the San Francisco County Superior Court, pursuant to Code of  
19 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
20 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
21 wrongful conduct occurred, and continue to occur, in San Francisco County, and/or because  
22 DEFENDANTS conducted, and continues to conduct, business in this county with respect to the  
23 PRODUCTS.

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



1 28. DEFENDANTS have engaged in the manufacture, distribution, sale, and offering of  
2 the PRODUCTS for sale or consumption in violation of Health and Safety Code § 25249.6, and  
3 DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day  
4 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and  
5 will continue to occur in the future.

6 29. After receiving the claims asserted in the sixty-day notice of violation, the appropriate  
7 public enforcement agencies have failed to commence and diligently prosecute a cause of action  
8 against DEFENDANTS under Proposition 65.

9 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale or  
10 use in California by DEFENDANTS contain 4-MEI such that it requires a “clear and reasonable”  
11 warning under Proposition 65.

12 31. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,  
13 import, distribute, sell, and offer for sale or use in California contain 4-MEI.

14 32. 4-MEI is present in the PRODUCTS in such a way as to expose individuals to 4-MEI  
15 through ingestion during reasonably foreseeable use of the PRODUCTS including through  
16 workplace exposure of the PRODUCTS.

17 33. The normal and reasonably foreseeable consumption of the PRODUCTS has caused,  
18 and continues to cause, consumer exposures to 4-MEI, as such exposures are defined by California  
19 Code of Regulations title 27, § 25602(b).

20 34. DEFENDANTS have actual and/or constructive knowledge that the normal and  
21 reasonably foreseeable consumption of the PRODUCTS would ultimately expose individuals to 4-  
22 MEI through ingestion.

23 35. DEFENDANTS intended that such exposures to 4-MEI from the reasonably  
24 foreseeable consumption of the PRODUCTS would occur by DEFENDANTS’ deliberate, non-  
25 accidental participation in the manufacture, importation, distribution, sale, and/or offering of the  
26 PRODUCTS for sale to individuals in the state of California.

1           36. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
2 consumers and other individuals in the state of California who were or who would become exposed  
3 to 4-MEI through ingestion during the consumption of the PRODUCTS including through  
4 workplace exposure to the PRODUCTS.

5           37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
6 directly by California voters, individuals exposed to 4-MEI through ingestion resulting from the  
7 consumption of the PRODUCTS including through workplace exposure to the PRODUCTS sold by  
8 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to suffer,  
9 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

10           38. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
11 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each  
12 violation.

13           39. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)  
14 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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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 Health and Safety Code § 25249.7(b), assess civil  
4 penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

5 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
6 permanently enjoin DEFENDANTS from preparing, distributing, or offering the PRODUCTS for  
7 sale or consumption in California without first providing a “clear and reasonable warning” as  
8 defined by California Code of Regulations title 27, § 25601 et seq., as to the harms associated with  
9 exposures to 4-MEI;


10 3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary  
11 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the  
12 chain of commerce in California without a “clear and reasonable warning” as defined by California  
13 Code of Regulations title 27, § 25601 et seq.

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

15 5. That the Court grant such other and further relief as may be just and proper.  
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18 Dated: August 30, 2013

Respectfully Submitted,  
THE CHANLER GROUP

19  
20 By:   
21 Clifford A. Chanler  
22 Attorneys for Plaintiff  
23 WHITNEY R. LEEMAN, PH.D.  
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