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Superior Court of California  
County of San Francisco

AUG 30 2013

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

SETHNESS PRODUCTS COMPANY; and  
DOES 1-150, inclusive,

Defendants.

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

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

By Fax







1 except those given by statute to other trial courts.” The statute under which this action is brought  
2 does not specify any other basis of subject matter jurisdiction.

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on  
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
5 association that is a citizen of the state of California, has sufficient minimum contacts in the state of  
6 California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS’  
7 purposeful availment renders the exercise of personal jurisdiction by California courts over  
8 DEFENDANTS consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 - Against All Defendants)**

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

13 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
14 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed  
15 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

16 26. Proposition 65 states, “[n]o person in the course of doing business shall knowingly  
17 and intentionally expose any individual to a chemical known to the state to cause cancer or  
18 reproductive toxicity without first giving clear and reasonable warning to such individual . . .”  
19 Health & Safety Code § 25249.6.

20 27. On June 14, 2013, plaintiff’s sixty-day notice of violation—together with the  
21 certificate of merit required by Health & Safety Code § 25249.7(d)(1)—was served on SETHNESS  
22 and the requisite public prosecutors pursuant to California Code of Regulations title 27,  
23 § 25903(c)(3), stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing 4-  
24 MEI, purchasers and consumers in the state of California were being exposed to 4-MEI resulting  
25 from their reasonably foreseeable use and consumption of the PRODUCTS, without having been  
26 provided with a “clear and reasonable warning” regarding such toxic exposures, as required by  
27 Proposition 65.

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 of 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 of 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

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21 By:   
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Attorneys for Plaintiff  
22 WHITNEY R. LEEMAN, PH.D.  
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