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ENDORSED FILED  
SAN MATEO COUNTY

FEB 23 2016

Clerk of the Superior Court  
By NIMA MOKHTARANI  
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

UNLIMITED CIVIL JURISDICTION

CIV537498

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

NAPOLEON PERDIS COSMETICS, INC.;  
DILLARD'S, INC.; and DOES 1-150,  
inclusive,

Defendants.

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

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.5 *et seq.*)

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 health hazards caused by exposures to di(2-  
5 ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl/PVC cosmetic bags sold by  
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
8 warn California citizens and other individuals not covered by California's Occupational Safety  
9 Health Act, Labor Code section 6300 et seq. about the risks of exposure to DEHP present in and  
10 on vinyl/PVC cosmetic bags that are manufactured, distributed, and offered for sale or use to  
11 consumers and other individuals throughout the State of California. Individuals not covered by  
12 California's Occupational Safety Health Act, Labor Code section 6300 et seq. who purchase,  
13 use or handle defendants' products are referred to hereinafter as "consumers".

14 3. Detectable levels of DEHP are found in and on vinyl/PVC cosmetic bags that  
15 defendants manufacture, distribute, and offer for sale without a warning to consumers  
16 throughout the State of California.

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

22 5. On October 24, 2003, California identified and listed DEHP pursuant to  
23 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. DEHP  
24 became subject to the "clear and reasonable warning" requirements of the act one year later on  
25 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
26 25249.10(b).

27 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
28 hazard warnings in California, vinyl/PVC cosmetic bags, including, but not limited to, the

1 *Napoleon Limited-Edition Love Birds Collection White Swan, UPC #9 322111 175547.* All  
2 such vinyl/PVC cosmetic bags containing DEHP are referred to collectively hereinafter as  
3 “PRODUCTS.”

4 7. Defendants’ failure to warn consumers in the State of California of the health  
5 hazards associated with exposures to DEHP in conjunction with defendants’ sales of the  
6 PRODUCTS are violations of Proposition 65, and subject defendants, and each of them, to  
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code  
8 § 25249.7(a) & (b)(1).

9 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
10 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with  
11 the required warning regarding the health hazards associated with exposures to DEHP. Health  
12 & Safety Code § 25249.7(a).

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

15 **PARTIES**

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

20 11. Defendant NAPOLEON PERDIS COSMETICS, INC. (“NAPOLEON PERDIS”) is a person in the course of doing business within the meaning of Health and Safety Code  
21 sections 25249.6 and 25249.11.  
22

23 12. NAPOLEON PERDIS manufactures, imports, distributes, sells, and/or offers the  
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
26 State of California.

27 13. Defendant DILLARD’S, INC. (“DILLARD’S”) is a person in the course of doing  
28 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

1           14. DILLARD'S manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California.

5           15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
6 person in the course of doing business within the meaning of Health and Safety Code sections  
7 25249.6 and 25249.11.

8           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
9 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
10 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
11 California.

12           17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
13 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
14 and 25249.11.

15           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
16 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
17 in the State of California.

18           19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
19 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
20 and 25249.11.

21           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
22 State of California.

23           21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.  
28



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

5           29. On September 15, 2015, plaintiff served a sixty-day notice of violation, together  
6 with the requisite certificate of merit, on NAPOLEON PERDIS, DILLARD’S, and the requisite  
7 public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of the  
8 PRODUCTS containing DEHP, consumers in the State of California were being exposed to  
9 DEHP resulting from their reasonably foreseeable use of the PRODUCTS, without the  
10 consumers first having been provided with a “clear and reasonable warning” regarding the  
11 harms associated with such exposures, as required by Proposition 65.

12           30. DEFENDANTS have manufactured, imported, distributed, sold, and offered the  
13 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
14 DEFENDANTS’ violations have continued beyond their receipt of plaintiff’s sixty-day notice  
15 of violation. DEFENDANTS’ violations are ongoing and continuous in nature, and, as such,  
16 will continue in the future.

17           31. After receiving plaintiff’s sixty-day notice of violation, no public enforcement  
18 agencies have commenced and diligently prosecuted a cause of action against DEFENDANTS  
19 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice of  
20 violation.

21           32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
22 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
23 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
24 consumers in California are not exempt from the “clear and reasonable” warning requirements  
25 of Proposition 65, yet DEFENDANTS provide no warning.

26           33. DEFENDANTS knew or should have known that the PRODUCTS they  
27 manufactured, imported, distributed, sell, and offer for sale or use in California contain DEHP.  
28

1           34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers  
2 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

3           35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
4 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code  
5 of Regulations, section 25602(b).

6           36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
7 the PRODUCTS exposes consumers to DEHP through dermal contact and/or ingestion.

8           37. DEFENDANTS intended that exposures to DEHP from the reasonably  
9 foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation  
10 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or  
11 use to consumers in California.

12           38. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
13 consumers in California who were or who would become exposed to DEHP through dermal  
14 contact and/or ingestion resulting from their use of the PRODUCTS.

15           39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
16 directly by California voters, consumers exposed to DEHP through dermal contact and/or  
17 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a "clear  
18 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm  
19 for which they have no plain, speedy, or adequate remedy at law.

20           40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
21 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
22 for each violation.

23           41. As a consequence of the above-described acts, Health and Safety Code  
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
25 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 section 25249.7(b), assess  
4 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for  
5 each violation;

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
8 offering the PRODUCTS for sale or use in California without first providing a "clear and  
9 reasonable warning" in accordance with title 27 of the California Code of Regulations, section  
10 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

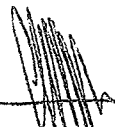
11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
13 currently in the chain of commerce in California without a "clear and reasonable warning" as  
14 defined by California Code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

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

16 5. That the Court grant such other and further relief as may be just and proper.  
17

18 Dated: February 9, 2016

Respectfully Submitted,  
THE CHANLER GROUP

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20  
21 By:   
22 Christopher Tuttle  
23 Attorneys for Plaintiff  
24 WHITNEY R. LEEMAN, PH.D.  
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