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ENDORSED
FILED
Superior Court of California
County of San Francisco
MAR 23 2016
CLERK OF THE COURT
BY: ROSSALY L. LA VEGA
Deputy Clerk

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

CGC 16-551104

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 FRANKFORD CANDY LLC; and DOES 1 –
20 150, inclusive,

21 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *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 health hazards caused by exposures to Lead, a toxic
5 chemical found in and on the exterior designs of mugs sold by defendants in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
8 section 6300 et seq., who purchase, use or handle defendants’ products, about the risks of
9 exposure to Lead present in and on the exterior designs or mugs manufactured, distributed, and
10 offered for sale or use throughout the State of California. Individuals not covered by
11 California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who purchase,
12 use or handle defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of Lead are found in and on the exterior designs of mugs that
14 defendants manufacture, distribute, and offer for sale to consumers throughout the State of
15 California.

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

21 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed
22 Lead as a chemical known to cause birth defects or other reproductive harm. Lead became
23 subject to the “clear and reasonable warning” requirements of the act one year later on February
24 27, 1988. 27 Cal. Code Regs. § 27001(c); Health and Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and offer for sale without health
26 hazard warnings in California, mugs with exterior designs that contain and expose consumers to
27 Lead including, but not limited to, the *Nickelodeon Teenage Mutant Ninja Turtles Hot Cocoa*
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1 *Mug Set, Item No. 40109, UPC No. 0 41376 40109 1.* All such mugs with exterior designs
2 containing Lead are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

14 **PARTIES**

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

19 11. Defendant FRANKFORD CANDY LLC (“FRANKFORD CANDY”) is a person
20 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
21 and 25249.11.

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

26 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
27 person in the course of doing business within the meaning of Health and Safety Code sections
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1 25249.6 and 25249.11.

2 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
3 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
4 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
5 sale or use in California.

6 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
7 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
8 and 25249.11.

9 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
10 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
11 retailers for sale or use in the State of California, or each implies by its conduct that it
12 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
13 individuals, businesses, or retailers for sale or use in the State of California.

14 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
15 the course of doing business within the meaning of Health and Safety Code sections 25249.6
16 and 25249.11.

17 18. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
18 individuals in the State of California.

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

24 20. FRANKFORD CANDY, MANUFACTURER DEFENDANTS, DISTRIBUTOR
25 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be
26 referred to collectively as the “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

2 21. Venue is proper in the Superior Court for the County of San Francisco, pursuant
3 to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
4 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
5 one or more instances of wrongful conduct occurred, and continue to occur, in San Francisco,
6 and because DEFENDANTS conducted, and continue to conduct, business in this county with
7 respect to the PRODUCTS.

8 22. The California Superior Court has jurisdiction over this action pursuant to
9 California Constitution Article VI, section 10, which grants the Superior Court “original
10 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
11 which this action is brought does not specify any other basis of subject matter jurisdiction.

12 23. The California Superior Court has jurisdiction over DEFENDANTS based on
13 plaintiff’s information and good faith belief that DEFENDANTS are each a person, firm,
14 corporation or association that is a citizen of the State of California, has sufficient minimum
15 contacts in the State of California, and/or otherwise purposefully avails itself of the California
16 market. DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
17 California courts consistent with traditional notions of fair play and substantial justice.

18 **FIRST CAUSE OF ACTION**

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

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

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

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

3 27. On December 1, 2015, plaintiff served a sixty-day notice of violation, together
4 with the accompanying certificate of merit, on FRANKFORD CANDY, the California Attorney
5 General’s Office, and the requisite public enforcement agencies alleging that, as a result of
6 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are being
7 exposed to Lead resulting from their reasonably foreseeable use of the PRODUCTS, without the
8 consumers first receiving a “clear and reasonable warning” regarding the harms associated with
9 exposures to Lead, as required by Proposition 65.

10 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
11 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
12 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
13 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
14 will continue in the future.

15 29. After receiving plaintiff’s sixty-day notice of violation, no public enforcer has
16 commenced and diligently prosecuted a cause of action against DEFENDANTS under
17 Proposition 65 to enforce the alleged violations that are the subject of plaintiff’s notice.

18 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
19 offer for sale or use in California cause exposures to Lead as a result of the reasonably foreseeable
20 use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
21 California are not exempt from the “clear and reasonable” warning requirements of Proposition
22 65, yet DEFENDANTS provide no warning. DEFENDANTS violations of Proposition 65,
23 resulting from their failure to provide warnings to consumers exposed to Lead from the
24 PRODUCTS have continued since as far back as December 1, 2012.

25 31. DEFENDANTS knew or should have known that the PRODUCTS they
26 manufacture, import, distribute, sell, and offer for sale in California contain Lead.
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1 32. Lead is present in or on the PRODUCTS in such a way as to expose consumers
2 through dermal contact and/or ingestion during reasonably foreseeable use.

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

6 34. DEFENDANTS know that the normal and reasonably foreseeable use of the
7 PRODUCTS exposes individuals to Lead through dermal contact and/or ingestion.

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

12 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
13 consumers in California who have been, or who will be, exposed to Lead through dermal
14 contact and/or ingestion resulting from their use of the PRODUCTS.

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

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

23 39. 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” regarding the harms associated with exposures to Lead in accordance with
10 title 27 of the California Code of Regulations section 25601 *et seq.*;

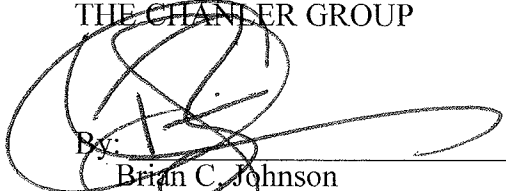
11 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
13 currently in the chain of commerce in California without a “clear and reasonable warning” as
14 defined by title 27California Code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

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18 Dated: March 10, 2016

Respectfully submitted,
THE CHANDLER GROUP

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21 By: 
22 Brian C. Johnson
23 Attorneys for Plaintiff
24 WHITNEY R. LEEMAN, PH.D.
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