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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

06/22/2023
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

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

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

BEAUTY 21, INC.; and DOES 1-30, inclusive,

Defendants.

Case No.

CGC-23-607201
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health & Safety Code § 25249.5 *et*
seq.)

UNLIMITED CIVIL

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest,
2 alleges a cause of action against Defendants BEAUTY 21, INC. and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff Center for Advanced
5 Public Awareness (“CAPA”) in the public interest of the citizens of the State of California to enforce
6 the People’s right to be informed of the health hazards caused by exposures to the heavy metal, Lead,
7 a toxic chemical found on the glass cosmetic bottles with exterior decorations manufactured,
8 imported, distributed, sold or offered for sale by Defendants in the State of California.

9 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
10 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
11 (“**consumers**”) that they are being exposed to Lead, a substance known to the State of California to
12 cause cancer and birth defects or other reproductive harm and present in and on the exterior
13 decorations when using or handling Defendants’ glass cosmetic bottles with exterior decorations.

14 3. Detectable levels of Lead are found on the glass cosmetic bottles with exterior
15 decorations that Defendants manufacture, import, sell or distribute for sale to individuals throughout
16 California.

17 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
18 Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course
19 of doing business to knowingly and intentionally expose consumers in California to chemicals known
20 to the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear
21 and reasonable” health hazard warning to such individuals prior to purchase or use.

22 5. CAPA contends and alleges Defendants manufacture, distribute, import, sell, and offer
23 for sale, in and into California glass cosmetic bottles with exterior decorations (“**PRODUCTS**”)
24 containing Lead, without Proposition 65’s requisite health hazard warning regarding the harms
25 associated with exposures to the chemical, including, but not limited to, the *L.A. Colors Super*
26 *Strength Nail Builder #BLQ356 UPC 0 81555 73356 8*. Defendants’ conduct subjects them to civil
27 penalties for each violation, enjoinder as well as preliminary and permanent injunctive relief.
28 Health & Safety Code § 25249.7(a) and (b).

1 **PARTIES**

2 6. Plaintiff CAPA is a non-profit corporation organized under the laws of California and
3 acting in the interest of the general public, dedicated to protecting the health of California citizens and
4 the environment through the elimination and reduction of toxic chemicals used in manufacturing
5 consumer products and to increasing public awareness of those chemicals through the promotion of
6 sound environmental practices and corporate responsibility. CAPA brings this action in the public
7 interest, pursuant to Health and Safety Code § 25249.7(d).

8 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
9 BEAUTY 21, INC. (“**BEAUTY 21**”) was and is a “person” “in the course of doing business” within
10 the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

11 8. BEAUTY 21 imports, distributes, sells, and/or offers the PRODUCTS for sale or use
12 in the State of California, or implies by its conduct that it imports, distributes, sells, and/or offers the
13 PRODUCTS for sale or use in the State of California.

14 9. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person
15 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
16 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
17 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
18 offered for sale or use in California.

19 10. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
20 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
21 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each
22 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
23 retailers for sale or use in the State of California.

24 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
25 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
26 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
27 for sale to individuals in the State of California.
28

1 12. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
2 unknown to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant
3 to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each
4 of the fictitiously named Defendants is responsible in some manner for the acts and occurrences
5 alleged herein and the damages caused thereby. When ascertained, their true names and capacities
6 shall be reflected in an amended complaint.

7 13. At all times mentioned herein, BEAUTY 21, MANUFACTURER DEFENDANTS,
8 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
9 appropriate, be referred to collectively as the “DEFENDANTS.”

10 **JURISDICTION AND VENUE**

11 14. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
12 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
13 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
14 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
15 other trial courts.” The statute under which this action is brought does not specify any other basis of
16 subject matter jurisdiction.

17 15. The California Superior Court has jurisdiction over DEFENDANTS, based on
18 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or
19 association that is a citizen of the State of California, does sufficient business in California, has
20 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
21 themselves of the California market through their manufacture, importation, distribution, promotion,
22 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders
23 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair
24 play and substantial justice.

25 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to
26 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
27 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more
28 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because

1 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
2 respect to the PRODUCTS that are the subject of this action.

3 **REGULATORY BACKGROUND AND LAW**

4 17. In 1986, the people of the State of California approved an initiative addressing the
5 harms caused by hazardous chemicals and declared their right “[t]o be informed about exposures to
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed
7 General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

8 18. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and
9 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o
10 person in the course of doing business shall knowingly and intentionally expose any individual to a
11 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
12 warning to such individual...”

13 19. Under the Act, a “person in the course of doing business” is defined as a business with
14 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from
15 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.
16 Health & Safety Code § 25249.6.

17 20. Exposing individuals to hazardous chemicals means to cause individuals to ingest,
18 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR
19 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s
20 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”
21 27 C.C.R. § 25600(h).

22 21. Under Proposition 65, persons violating the statute may be enjoined in any court of
23 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
24 Health & Safety Code § 25249.7.

25 22. On February 27, 1987, pursuant to Proposition 65’s implementing regulations,
26 California identified and listed Lead as a chemical known to cause birth defects and reproductive
27 harm. Lead became subject to the “clear and reasonable warning” requirements one year later, on
28 February 27, 1988. 27 C.C.R. § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

1 23. On October 1, 1992, pursuant to Proposition 65’s implementing regulations, California
2 identified and listed Lead as a chemical known to cause cancer, and Lead became subject to the “clear
3 and reasonable warning” requirements one year later, on October 1, 1993. 27 C.C.R. § 27001(c);
4 Health & Safety Code §§ 25249.8, 25249.10(b)

5 **STATEMENT OF FACTS**

6 24. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

7 25. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,
8 and consulted with persons with relevant and appropriate knowledge and expertise, who, after
9 reviewing the collected data and analyzing the risk of exposure to Lead, determined the PRODUCTS
10 subject consumers in California to exposures to the listed chemical at levels requiring a warning
11 under the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with
12 their reasonably foreseeable and intended usages.

13 26. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting
14 there was a reasonable and meritorious case for this private action and included the factual
15 information supporting the certificate when it served the notice on the California Attorney General’s
16 Office, as required. Health & Safety Code § 25249.7(d); 11 C.C.R. § 3102.

17 27. Thereafter, on September 13, 2022, plaintiff served a 60-Day Notice of Violation
18 (“**Notice**”), together with the certificate of merit, on BEAUTY 21, the California Attorney General’s
19 Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales
20 of the PRODUCTS, consumers in the State of California were, and are, being exposed to Lead
21 through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a
22 “clear and reasonable warning,” as required by Proposition 65.

23 28. After receiving plaintiff’s Notice, no public enforcement agency has commenced and
24 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
25 the alleged violations that are the subject of the Notice.

26 **FIRST CAUSE OF ACTION**
(Violation of Proposition 65 - Against All DEFENDANTS)

27 29. CAPA realleges and incorporates by reference, as if fully stated herein, the allegations
28 set forth in Paragraphs 1 through 28, inclusive.

1 30. DEFENDANTS' PRODUCTS contain Lead in levels requiring a clear and reasonable
2 warning under Proposition 65.

3 31. DEFENDANTS know or should have known the PRODUCTS they manufacture,
4 import, distribute, sell, and offer for sale in California contain Lead. As a result of plaintiff's Notice,
5 DEFENDANTS also have actual knowledge of the presence of Lead in the PRODUCTS.

6 32. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
7 sale in or into the State of California cause exposures to Lead, by dermal contact and ingestion via
8 hand to mouth contact, through the reasonably foreseeable use of the PRODUCTS.

9 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
10 continues to cause, exposures to Lead.

11 34. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
12 exposes individuals to Lead through dermal contact and ingestion.

13 35. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the
14 PRODUCTS to occur by their deliberate, non-accidental participation in the California marketplace.

15 36. The exposures to Lead, caused by DEFENDANTS and endured by consumers and
16 other individuals in California, are not exempt from the "clear and reasonable" warning requirements
17 of Proposition 65.

18 37. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
19 and other individuals in California who have been, or who will be, exposed to Lead through dermal
20 contact and ingestion resulting from the use of the PRODUCTS as intended.

21 38. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
22 exposed to Lead through dermal contact and ingestion as a result of their use of the PRODUCTS that
23 DEFENDANTS sold without a "clear and reasonable" health hazard warning, have suffered, and
24 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

25 39. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
26 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
27 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
28 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

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

6 **PRAYER FOR RELIEF**

7 Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them,
8 as follows:

9 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
10 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
11 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
12 reasonable warning” to consumers addressing the harms associated with exposures to Lead;

13 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
14 and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain
15 of commerce in California that do not bear a clear and reasonable health hazard warning;

16 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the
17 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

18 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
19 herein; and

20 5. That the Court grant any further relief as it deems just and equitable.

21 Dated: June 22, 2023

Respectfully submitted,

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24 _____
25 Kimberly Gates Johnson
26 Attorneys for Plaintiff
27 *Center for Advanced Public Awareness*
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