

E-FILED
7/24/2023 3:02 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV419667
Reviewed By: M. Suarez

1 Laralei S. Paras, State Bar No. 203319
Seven Hills LLP
2 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
3 Telephone: (415) 926-7247
laralei@sevenhillslp.com

4 Attorneys for Plaintiff
5 CENTER FOR ADVANCED PUBLIC AWARENESS

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SANTA CLARA
9 UNLIMITED CIVIL JURISDICTION

10
11 CENTER FOR ADVANCED PUBLIC
AWARENESS,
12 Plaintiff,
13
14 v.
15 BYMM CORPORATION DBA
KLEANCOLOR; and DOES 1-30, inclusive,
16 Defendants.

Case No. 23CV419667
**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 BYMM CORPORATION DBA KLEANCOLOR and
3 DOES 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

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

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

15 3. Detectable levels of Lead are found on the glass bottles with exterior decorations that
16 Defendants manufacture, import, sell or distribute for sale to consumers throughout 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 bottles with exterior decorations (“**PRODUCTS**”) containing
24 Lead, without Proposition 65’s requisite health hazard warning regarding the harms associated with
25 exposures to the chemical, including, but not limited to, *KLEANCOLOR Nail Lacquer, 204 Neon*
26 *Lime, #DGTT25FM, UPC 8 36558 00888 1*. Defendants’ conduct subjects them to civil penalties for
27 each violation, enjoinder as well as preliminary and permanent injunctive relief. Health & Safety
28 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 or reduction of toxic chemicals utilized 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 is a person within the meaning of
7 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to
8 Health and Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
10 BYMM CORPORATION DBA KLEANCOLOR (“**KLEANCOLOR**”) was and is a “person” “in the
11 course of doing business” with ten (10) or more employees, within the meanings of Health and Safety
12 Code §§ 25249.6 and 25249.11.

13 8. KLEANCOLOR manufactures, imports, distributes, sells, and/or offers the
14 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
15 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

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

26 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
27 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
28

1 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
2 for sale to individuals in the State of California.

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

9 13. At all times mentioned herein, KLEANCOLOR, MANUFACTURER
10 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
11 hereinafter, where appropriate, be referred to collectively as the “DEFENDANTS.”

12 **JURISDICTION AND VENUE**

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

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

27 16. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code
28 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,

1 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
2 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
3 conducted, and continue to conduct, business in the County of Santa Clara with respect to the
4 PRODUCTS that are the subject of this action.

5 **REGULATORY BACKGROUND AND LAW**

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

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

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

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

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

27 22. On February 27, 1987, pursuant to Proposition 65’s implementing regulations,
28 California identified and listed Lead as a chemical known to cause birth defects and reproductive

1 harm. Lead became subject to the “clear and reasonable warning” requirements one year later, on
2 February 27, 1988. 27 CCR § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

3 **STATEMENT OF FACTS**

4 23. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

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

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

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

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

24 **FIRST CAUSE OF ACTION**

25 **(Violation of Proposition 65 - Against All DEFENDANTS)**

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

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

3 30. 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 31. 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 32. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
10 continues to cause, exposures to Lead.

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

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

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

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

21 37. 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 38. 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 39. 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 40. 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: July 19, 2023

Respectfully submitted,

SEVEN HILLS LLP

23
24 By: 

Laralei Paras
Attorneys for Plaintiff
Center for Advanced Public Awareness