

1 Laralei Paras, State Bar No. 203319
2 Brian C. Johnson, State Bar No. 235965
3 SEVEN HILLS LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 Email: laralei@sevenhillslp.com
8 Email: brian@sevenhillslp.com

9 Attorneys for Plaintiff
10 CENTER FOR ADVANCED PUBLIC AWARENESS

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

10/05/2023
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
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16 CENTER FOR ADVANCED PUBLIC
17 AWARENESS,
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19 Plaintiff,
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21 v.
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23 RIMPORTS, LLC; and DOES 1-30, inclusive,
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25 Defendants.
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Case No. **CGC-23-609536**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
Violations of Health & Safety Code § 25249.6

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest,
2 alleges a cause of action against defendants RIMPORTS LLC 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 ceramic diffusers with exterior decorations manufactured, imported,
8 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”) exposed to Lead, a substance known to the State of California to cause cancer, and
12 birth defects or other reproductive harm present in and on Defendants’ ceramic diffusers with exterior
13 decorations.

14 3. Detectable levels of Lead are found on the ceramic diffusers with exterior decorations
15 that defendants manufacture, import, sell or distribute for sale to individuals throughout California.

16 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
17 Health and Safety Code § 25249.5 *et seq.* (“Proposition 65”), it is unlawful for a person in the course
18 of doing business to knowingly and intentionally expose consumers in California to chemicals known
19 to the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear
20 and reasonable” health hazard warning to such individuals.

21 5. CAPA contends and alleges defendants manufacture, distribute, import, sell, and offer
22 for sale, in and into California ceramic diffusers with exterior decorations (“PRODUCTS”)
23 containing Lead. Such PRODUCTS expose consumers and other individuals in California to Lead
24 and defendants expose such consumers and other individuals without first providing the health hazard
25 warning required by Proposition 65. Defendants Lead-containing PRODUCTS include, but are not
26 limited to, the *ScentSationals Ceramic Flower Diffuser, Burberry, UPC 8 43283 14320 6*.
27 Defendants’ conduct subjects them to civil penalties for each violation, enjoinder as well as
28 preliminary and permanent injunctive relief. 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 RIMPORTS, LLC (“RIMPORTS”) 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. RIMPORTS imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
12 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. Defendants sell and offer these PRODUCTS
14 for sale through major retailers including Walmart and Big Lots stores.

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

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

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

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 Cal. Code
19 Regs. § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
21 product...”
22 27 Cal. Code Regs. § 25600(h).

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

26 22. On February 27, 1987, pursuant to Proposition 65’s implementing regulations,
27 California identified and listed Lead as a chemical known to cause birth defects and reproductive
28 harm. Lead became subject to the “clear and reasonable warning” requirements one year later, on

1 February 27, 1988. 27 Cal. Code Regs. § 27001(c); Health & Safety Code §§ 25249.8 and
2 25249.10(b).

3 23. On October 1, 1992, pursuant to Proposition 65’s implementing regulations, California
4 identified and listed Lead as a chemical known to cause cancer, and Lead became subject to the “clear
5 and reasonable warning” requirements one year later, on October 1, 1993. 27 Cal. Code Regs. §
6 27001(c); Health & Safety Code §§ 25249.8 and 25249.10(b).

7 **STATEMENT OF FACTS**

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

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

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

19 27. Thereafter, on November 4, 2022, plaintiff served a 60-Day Notice of Violation (the
20 “2022 Notice”), together with the certificate of merit, on RIMPORTS, the California Attorney
21 General’s Office, and the requisite public enforcement agencies, alleging, as a result of
22 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and are, being
23 exposed to Lead through their reasonably foreseeable use of the PRODUCTS without first receiving a
24 “clear and reasonable warning,” as required by Proposition 65.

25 28. DEFENDANTS’ violations, however, continued beyond their receipt of Plaintiff’s
26 2022 Notice. On January 13, 2023, Plaintiff served RIMPORTS with a second 60-Day Notice of
27 Violation (the “2023 Notice.”) together with the certificate of merit, on RIMPORTS, the California
28 Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a result of

1 DEFENDANTS’ sales of the PRODUCTS, consumers and other individuals in the State of California
2 continued to suffer exposures to Lead through their reasonably foreseeable use of the PRODUCTS
3 without first receiving a “clear and reasonable warning,” as required by Proposition 65. (the 2022
4 Notice and 2023 Notice shall be referred to collectively as the “Notices.”)

5 29. After receiving plaintiff’s Notices, no public enforcement agency has commenced and
6 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
7 the alleged violations that are the subject of the Notice.

8 **FIRST CAUSE OF ACTION**

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

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

12 31. DEFENDANTS’ PRODUCTS contain Lead in levels requiring a clear and reasonable
13 warning under Proposition 65.

14 32. DEFENDANTS knew or should have known the PRODUCTS they manufacture,
15 import, distribute, sell, and offer for sale in California contain Lead. As a result of plaintiff’s Notice,
16 DEFENDANTS also have actual knowledge of the presence of Lead in the PRODUCTS.

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

20 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
21 continues to cause, exposures to Lead.

22 35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
23 exposes individuals to Lead through dermal contact and ingestion.

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

26 37. The exposures to Lead, caused by DEFENDANTS and endured by consumers and
27 other individuals in California, are not exempt from the “clear and reasonable” warning requirements
28 of Proposition 65.

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

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

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

Dated: October 5, 2023

Respectfully submitted,



Brian C. Johnson
Attorneys for Plaintiff
Center for Advanced Public Awareness