1 2 3 4 5 6 7	Laralei Paras, State Bar No. 203319 Brian C. Johnson, State Bar No. 235965 SEVEN HILLS LLP 4 Embarcadero Center, Suite 1400 San Francisco, CA 94111 Telephone: (415) 926-7247 Email: laralei@sevenhillsllp.com Email: brian@sevenhillsllp.com Attorneys for Plaintiff CENTER FOR ADVANCED PUBLIC AWARE		ELECTRONICALLY FILED Superior Court of California, County of San Francisco 10/05/2023 Clerk of the Court BY: DAEJA ROGERS Deputy Clerk
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	COUNTY OF SAN FRANCISCO		
10	UNLIMITED CIVIL JURISDICTION		
11			
12	CENTER FOR ADVANCED PUBLIC AWARENESS,	Case No.	CGC-23-609536
13	Plaintiff,	COMPLAINT FOR AND INJUNCTIVE	CIVIL PENALTIES RELIEF
14	v.	Violations of Health	& Safety Code § 25249.6
15	RIMPORTS, LLC; and DOES 1-30, inclusive,		
16	Defendants.		
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20	COMPLAINT FOR CIVIL PENA	LTIES AND INJUNCTIVE	RELIEF

Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest, alleges a cause of action against defendants RIMPORTS LLC and DOES 1-30.

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INTRODUCTION AND NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Center for Advanced Public Awareness ("CAPA") in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to the heavy metal, Lead, a toxic chemical found on the ceramic diffusers with exterior decorations manufactured, 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
individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq.*("consumers") exposed to Lead, a substance known to the State of California to cause cancer, and
birth defects or other reproductive harm present in and on Defendants' ceramic diffusers with exterior
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.

4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), it is unlawful for a person in the course
of doing business to knowingly and intentionally expose consumers in California to chemicals known
to the State to cause cancer, birth defects or other reproductive harm, without first providing a "clear
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, enjoinment as well as 28 preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

PARTIES

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6. Plaintiff CAPA is a non-profit corporation organized under the laws of California and acting in the interest of the general public, dedicated to protecting the health of California citizens and the environment through the elimination and reduction of toxic chemicals used in manufacturing consumer products and to increasing public awareness of those chemicals through the promotion of sound environmental practices and corporate responsibility. CAPA brings this action in the public 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.

8. RIMPORTS imports, distributes, sells, and/or offers the PRODUCTS for sale or use in
 the State of California, or implies by its conduct that it imports, distributes, sells, and/or offers the
 PRODUCTS for sale or use in the State of California. Defendants sell and offer these PRODUCTS
 for sale through major retailers including Walmart and Big Lots stores.

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

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

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

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

13. At all times mentioned herein, RIMPORTS, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the "DEFENDANTS."

JURISDICTION AND VENUE

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

15. 17 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 avails 21 itself 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.

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

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

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REGULATORY BACKGROUND AND LAW

17. In 1986, the people of the State of California approved an initiative addressing the harms caused by hazardous chemicals and declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed 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.

Exposing individuals to hazardous chemicals means to cause individuals to ingest,
inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 Cal. Code
Regs. § 25102(i). An exposure to a hazardous chemical is defined as one that "results from a
person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
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

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

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

STATEMENT OF FACTS

24. Plaintiff purchased DEFENDANTS' PRODUCTS, without a warning, in California.
25. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab,
and consulted with persons with relevant and appropriate knowledge and expertise, who, after
reviewing the collected data and analyzing the risk of exposure to Lead, determined the PRODUCTS
subject consumers in California to exposures to the listed chemical at levels requiring a warning
under the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with

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

their reasonably foreseeable and intended usages.

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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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

38. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers 2 and other individuals in California who have been, or who will be, exposed to Lead through dermal 3 contact and ingestion resulting from their use of the PRODUCTS.

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

9 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have 10 11 continued beyond their receipt of plaintiff's Notices. As such, DEFENDANTS' violations are 12 ongoing and continuous in nature and, unless enjoined, will continue in the future.

13 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the abovedescribed acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 14 15 per day for each violation.

42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) 16 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS. 17

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PRAYER FOR RELIEF

19 Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them, as follows: 20

21 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and 22 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or 23 otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and 24 reasonable warning" to consumers addressing the harms associated with exposures to Lead;

2. 25 That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain 26 27 of commerce in California that do not bear a clear and reasonable health hazard warning;

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1	3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the			
2	amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;			
3	4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred			
4	herein; and			
5	5.	That the Court grant any further relief as it deems just and equitable.		
6	Dated: Octol	ber 5, 2023 Respectfully submitted,		
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8		Brian C. Johnson Attorneys for Plaintiff		
9 10		Center for Advanced Public Awareness		
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF			