

1 Laralei Paras, State Bar No. 203319  
Kimberly Gates Johnson, State Bar No. 282369  
2 Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
3 San Francisco, CA 94111  
Telephone: (415) 926-7247  
4 laralei@sevenhillslp.com  
kimberly@sevenhillslp.com

5 Attorneys for Plaintiff  
6 CENTER FOR ADVANCED PUBLIC AWARENESS

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County of Santa Clara  
23CV421616  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SANTA CLARA

10 UNLIMITED CIVIL JURISDICTION

11  
12 CENTER FOR ADVANCED PUBLIC  
AWARENESS,

13 Plaintiff,

14 v.

15 ANNIE INTERNATIONAL, INC.; and  
16 DOES 1-30, inclusive,

17 Defendants.

Case No. 23CV421616

**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.*)

Action is an Unlimited Civil Case

1 Plaintiff Center for Advanced Public Awareness (“CAPA”), acting in the public interest,  
2 alleges a cause of action against Defendants ANNIE INTERNATIONAL, INC., and DOES 1-30.

### 3 INTRODUCTION AND NATURE OF THE ACTION

4 1. This Complaint is a representative action brought by CAPA in the public interest of  
5 the citizens of the State of California to enforce the People’s right to be informed of the health  
6 hazards caused by exposures to the heavy metal, Lead, a toxic chemical alleged herein to be found in  
7 glass bottles with exterior decoration manufactured and sold by Defendants to consumers in the State  
8 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**”) they are being exposed to substances known to the State of California to cause cancer,  
12 birth defects and other reproductive harm through exposures to Lead present on glass bottles with  
13 exterior decoration produced, manufactured, distributed, marketed, sold and otherwise offered for  
14 sale or use throughout the State of California by Defendants and purchased by consumers and other  
15 individuals who handle, touch, or otherwise utilize the products, resulting in exposures through  
16 dermal absorption and ingestion.

17 3. Detectable levels of Lead are found on the glass bottles with exterior decoration  
18 Defendants produce, manufacture, sell or distribute for sale to individuals throughout California.

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

24 5. CAPA contends and alleges Defendants manufacture, distribute, sell, and offer for  
25 sale, in or into California, glass bottles with exterior decoration containing Lead including, but not  
26 limited to, *Nanacoco Nail Polish, GEL Effect Nail Lacquer, 14 days of color, 0.5 fl. oz./15m.,*  
27 *#20107 Sherry, UPC 7 05372 20107 8,* (the “**PRODUCTS**”), without the compliant health hazard  
28 warning regarding the harms associated with exposures to the chemical required under Proposition

1 65. Defendants' conduct subjects them to civil penalties for each violation, enjoinder, and  
2 preliminary and permanent injunctive relief. Health & Saf. Code §§ 25249.7(a) and (b).

3 **PARTIES**

4 6. Plaintiff CAPA is a non-profit organization organized under the laws of California,  
5 acting in the interest of the general public, dedicated to protecting the health of California citizens and  
6 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing  
7 consumer products and increasing public awareness of those chemicals through the promotion of  
8 sound environmental practices and corporate responsibility. CAPA is a person, within the meaning  
9 of Health & Safety Code § 25249.11(a), and brings this action in the public interest pursuant to  
10 Health & Safety Code § 25249.7(d).

11 7. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant  
12 ANNIE INTERNATIONAL, INC. ("ANNIE") was and is a person in the course of doing business,  
13 with ten (10) or more employees, within the meaning of Health & Safety Code §§ 25249.6 and  
14 25249.11.

15 8. ANNIE produces, manufactures, distributes, sells, and/or offers the PRODUCTS for  
16 sale or use in the State of California, or implies by its conduct it produces, manufactures, distributes,  
17 sells, and/or offers the PRODUCTS for sale or use in the State of California.

18 9. Defendants DOES 1-10 ("**MANUFACTURER DEFENDANTS**") are each a person  
19 in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and  
20 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and  
21 manufacture, or imply by their conduct they do so, one or more of the PRODUCTS offered for sale or  
22 use in California.

23 10. Defendants DOES 11-20 ("**DISTRIBUTOR DEFENDANTS**") are each a person in  
24 the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.  
25 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or imply by  
26 their conduct they do so, one or more of the PRODUCTS to individuals, businesses, or retailers for  
27 sale or use in the State of California.

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1 11. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the  
2 course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.  
3 **RETAILER DEFENDANTS**, and each of them, offer the **PRODUCTS** for sale to individuals in the  
4 State of California.

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

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

#### 14 **JURISDICTION AND VENUE**

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

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

1 16. Venue is proper in the Superior Court for the County of Santa Clara pursuant to Code  
2 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
3 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
4 wrongful conduct occurred, and continue to occur, in this city and county, and/or because  
5 DEFENDANTS conducted, and continue to conduct, business in the County of Santa Clara with  
6 respect to the PRODUCTS that are the subject of this action.

### 7 **REGULATORY BACKGROUND AND LAW**

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

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

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

21 20. Exposing individuals to hazardous chemicals means to cause individuals to ingest,  
22 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. California  
23 Code of Regulations (“CCR”), tit. 27, section 25102(i). A consumer product exposure to a hazardous  
24 chemical is an exposure that “results from a person’s acquisition, purchase, storage, consumption or  
25 other reasonably foreseeable use of a product...” 27 CCR § 25600.1(e).

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

1 22. On February 27, 1987, pursuant to Proposition 65, California identified and listed  
2 Lead as a chemical known to cause birth defects and reproductive harm. Lead became subject to the  
3 “clear and reasonable warning” requirements one year later, on February 27, 1988. On October 1,  
4 1992, pursuant to Proposition 65’s implementing regulations, California identified and listed Lead as  
5 a chemical known to the State cause cancer. Lead became subject to the “clear and reasonable  
6 warning” requirements for cancer one year later, on October 1, 1993. 27 CCR § 27001(c); Health &  
7 Saf. Code §§ 25249.8, 25249.10(b).

8 **STATEMENT OF FACTS**

9 23. Plaintiff purchased the PRODUCTS, without a “clear and reasonable” warning, in  
10 California.

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

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

21 26. Thereafter, on March 17, 2023, plaintiff served a 60-Day Notice of Violation  
22 (“**Notice**”), together with the certificate of merit, on ANNIE INTERNATIONAL, INC., the  
23 California Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a  
24 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and  
25 are, being exposed to Lead through their reasonably foreseeable use of the PRODUCTS as intended  
26 without first receiving a “clear and reasonable warning,” as required by Proposition 65.

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1 27. After receiving plaintiff's Notice, no public enforcement agency has commenced and  
2 is diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the  
3 alleged violations that are the subject of the Notice.

4 **FIRST CAUSE OF ACTION**

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

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

8 29. DEFENDANTS' PRODUCTS contain Lead in levels requiring a "clear and  
9 reasonable" warning under Proposition 65.

10 30. DEFENDANTS knew or should have known the PRODUCTS they produce,  
11 manufacture, distribute, sell, and offer for sale in California contain Lead.

12 31. The PRODUCTS DEFENDANTS produce, manufacture, distribute, sell, and offer for  
13 sale or use in California cause exposures to Lead through dermal absorption and ingestion, as a result  
14 of the reasonably foreseeable use of the PRODUCTS.

15 32. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
16 continues to cause, exposures to Lead.

17 33. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS  
18 exposes individuals to Lead through dermal absorption and ingestion.

19 34. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the  
20 PRODUCTS will occur by their deliberate, non-accidental participation in the California  
21 marketplace.

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

25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers  
26 and other individuals in California who have been, or will be, exposed to Lead through dermal  
27 absorption and ingestion resulting from their use of the PRODUCTS as intended.

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1 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
2 directly by California voters, consumers and other individuals exposed to Lead through dermal  
3 absorption and ingestion as a result of their use of the PRODUCTS DEFENDANTS sold without a  
4 “clear and reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm  
5 for which they have no plain, speedy, or adequate remedy at law.

6 38. DEFENDANTS produce, manufacture, distribute, sell, and offer the PRODUCTS for  
7 sale or use in violation of Health & Safety Code § 25249.6, and DEFENDANTS’ violations have  
8 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are  
9 ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

13 40. As a consequence of the above-described acts, Health & Safety Code § 25249.7(a)  
14 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

15 **PRAYER FOR RELIEF**

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

18 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
19 permanently enjoin DEFENDANTS from producing, manufacturing, distributing, marketing or  
20 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and  
21 reasonable warning” regarding the harms associated with exposures to Lead or reformulating the  
22 PRODUCTS to remove Lead;

23 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), issue preliminary and  
24 permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of  
25 commerce in California without a “clear and reasonable warning”;

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

Dated: August 22, 2023

Respectfully submitted,

SEVEN HILLS LLP

By:  \_\_\_\_\_

Laralei S. Paras  
Attorneys for Plaintiff  
*Center for Advanced Public Awareness*