1	Laralei Paras, State Bar No. 203319 Brian C. Johnson, State Bar No. 235965 Seven Hills LLP	ELECTRONICALLY FILED Superior Court of California County of Sacramento 01/23/2024 By: <u>R. Fisher</u> Deputy 24CV001142	
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5 6	Attorneys for Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS		
7 8 9	SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SACRAMENTO - UNLIMITED CIVIL JURISDICTION		
10 11 12	CENTER FOR ADVANCED PUBLIC AWARENESS, Plaintiff,	Case No. COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
13 14 15	v. AMERICAN INTERNATIONAL INDUSTRIES, A CALIFORNIA GENERAL PARTNERSHIP; and DOES 1-30, inclusive, Defendants.	Violation of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code § 25249.5 <i>et</i> <i>seq.</i>) Action is an Unlimited Civil Case	
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	COMPLAINT FOR CIVIL PENAL	TIES AND INJUNCTIVE RELIEF	

Plaintiff Center for Advanced Public Awareness, acting in the public interest, alleges a cause of action against Defendants American International Industries, a California General Partnership, and DOES 1-30.

INTRODUCTION AND NATURE OF THE ACTION

1. This Complaint is a representative action brought by 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 Lead, a toxic chemical alleged herein to be found in glass bottles with exterior decorations manufactured and sold by Defendants to consumers in the State of California.

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") they are being exposed to substances known to the State of California to cause birth
 defects and other reproductive harm through exposures to Lead present on glass bottles with exterior
 decorations produced, manufactured, distributed, marketed, sold and otherwise offered for sale or use
 throughout the State of California by Defendants and purchased by consumers and other individuals
 who handle, touch, or otherwise utilize the products, resulting in exposures through dermal
 absorption and ingestion.

8 3. Detectable levels of Lead are found on the glass bottles with exterior decorations
9 Defendants produce, manufacture, sell or distribute for sale to consumers throughout California.

4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
Health & Safety Code § 25249.6 *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 consumers prior to purchase or use.

5. CAPA contends and alleges Defendants produce, manufacture, distribute, sell, and
offer for sale, in or into California, glass bottles with exterior decorations containing Lead including,
but not limited to, *China Glaze Nail Lacquer with Hardeners, 1749 Tangerine Heat, #85001, UPC 0 19965 85001 8,* (collectively referred to hereinafter as the "**PRODUCTS**"), without the compliant

health hazard warning regarding the harms associated with exposures to the chemical required under Proposition 65. Defendants' conduct subjects them to civil penalties for each violation, enjoinment, and preliminary and permanent injunctive relief. Health & Safety Code §§ 25249.7(a) and (b).

PARTIES

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

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7. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant
AMERICAN INTERNATIONAL INDUSTRIES, A CALIFORNIA GENERAL PARTNERSHIP.
("AII") was and is a person in the course of doing business, within the meaning of Health & Safety
Code §§ 25249.6 and 25249.11.

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

9. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person
 in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and
 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
 manufacture, or imply by their conduct they do so, 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 & Safety Code §§ 25249.6 and 25249.11.
DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or imply by
their conduct they do so, 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 & Safety Code §§ 25249.6 and 25249.11.
 RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to consumers in the State of California.

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12. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown to plaintiff, who, therefore, sues said 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.

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

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, marketing or sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders the 26 27 exercise of personal jurisdiction by California courts consistent with traditional notions of fair play 28 and substantial justice.

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16. Venue is proper in the Superior Court for the County of Sacramento 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 city and county, and/or because DEFENDANTS conducted, and continue to conduct, business in the County of Sacramento with respect to the PRODUCTS that are the subject of this action.

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REGULATORY BACKGROUND AND LAW

8 17. 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 18. Under the Act, a "person 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" health
16 hazard warning. Health & Safety Code § 25249.6

17 19. 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. California
19 Code of Regulations ("CCR"), tit. 27, § 25102(i). A consumer product exposure to a hazardous
20 chemical is an exposure that "results from a person's acquisition, purchase, storage, consumption or
21 other reasonably foreseeable use of a product..." 27 CCR § 25600.1(e).

22 20. Proposition 65 provides 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 21. On February 27, 1987, pursuant to Proposition 65, California identified and listed
26 Lead as a chemical known to cause birth defects and reproductive harm. Lead became subject to the
27 "clear and reasonable warning" requirements one year later, on February 27, 1988. On October 1,
28 1992, pursuant to Proposition 65's implementing regulations, California identified and listed Lead as

a chemical known to the State cause cancer. Lead became subject to the "clear and reasonable 2 warning" requirements for cancer one year later, on October 1, 1993. 27 CCR § 27001(c); Health & 3 Safety Code §§ 25249.8, 25249.10(b).

STATEMENT OF FACTS

DEFENDANTS' PRODUCTS are sold in California without a clear and reasonable 22. warning in violation of title 27, California Code of Regulations, section 25600, et seq.

23. 7 DEFENDANTS' PRODUCTS subject consumers in California to exposure to the 8 listed chemical at levels requiring a warning under the statute, based on touching, handling or 9 otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.

24. 10 On May 22, 2023, plaintiff served a 60-Day Notice of Violation ("Notice"), together 11 with the certificate of merit, on AMERICAN INTERNATIONAL, the California Attorney General's Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales 12 13 of the PRODUCTS, consumers in the State of California were, and are, being exposed to Lead 14 through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a 15 "clear and reasonable warning," as required by Proposition 65.

25. After receiving plaintiff's Notice, no public enforcement agency has commenced and 16 is diligently prosecuted a cause of action against DEFENDANTS under Proposition 65 to enforce the 17 18 alleged violations that are the subject of the Notice.

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FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All DEFENDANTS)

21 26. CAPA realleges and incorporates by reference, as if fully stated herein, the allegations 22 set forth in Paragraphs 1 through 25, inclusive.

23 27. DEFENDANTS' PRODUCTS contain Lead in levels requiring a "clear and reasonable" warning under Proposition 65. 24

28. DEFENDANTS knew or should have known the PRODUCTS they produce,

manufacture, distribute, sell, and offer for sale in California contain Lead. 26

27 29. The PRODUCTS DEFENDANTS manufacture, distribute, sell, and offer for sale or 28 use in California cause exposures to Lead through dermal absorption and ingestion, as a result of the 1 || reasonably foreseeable use of the PRODUCTS.

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

4 31. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
5 exposes consumers to Lead through dermal absorption and ingestion.

6 32. DEFENDANTS intend exposures to Lead from the reasonably foreseeable use of the
7 PRODUCTS will occur by their deliberate, non-accidental participation in the California
8 marketplace.

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

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

35. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
directly by California voters, consumers exposed to Lead through dermal absorption and ingestion as
a result of their use of the PRODUCTS DEFENDANTS sold 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.

19 36. DEFENDANTS produce, manufacture, distribute, sell, and offer the PRODUCTS for
20 sale or use in violation of Health & Safety Code § 25249.6, and DEFENDANTS' violations have
21 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
22 ongoing and continuous in nature and, unless enjoined, will continue in the future.

37. Pursuant to Health & 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
per day for each violation.

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

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1	<u>PRAYER FOR RELIEF</u>		
2	Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them,		
3	as follows:		
4	1.	That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and	
5	permanently enjoin DEFENDANTS from producing, manufacturing, distributing, marketing or		
6	otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and		
7	reasonable warning" regarding the harms associated with exposures to Lead or reformulating the		
8	PRODUCTS to remove Lead;		
9	2.	That the Court, pursuant to Health & Safety Code § 25249.7(a), issue preliminary and	
10	permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of		
11	commerce in California without a "clear and reasonable warning";		
12	3.	That the Court, assess civil penalties against DEFENDANTS, and each of them, in the	
13	amount of \$2,500 per day for each violation of Proposition 65, amounting to up to \$50,000 or an		
14	amount to be determined at trial;		
15	4.	That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred	
16	herein; and		
17	5.	That the Court grant any further relief as the Court may deem just and equitable.	
18	Dated: Janua	ry 24, 2024 Respectfully submitted,	
19		SEVEN HILLS LLP	
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21		By:	
22		Laralei S. Paras Attorneys for Plaintiff	
23		Center for Advanced Public Awareness	
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