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By: R. Fisher Deputy

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CENTER FOR ADVANCED PUBLIC AWARENESS

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO - UNLIMITED CIVIL JURISDICTION

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

AMERICAN INTERNATIONAL INDUSTRIES,
A CALIFORNIA GENERAL PARTNERSHIP;
and DOES 1-30, inclusive,

Defendants.

Case No.

**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, acting in the public interest, alleges a cause
2 of action against Defendants American International Industries, a California General Partnership,
3 and DOES 1-30.

4 INTRODUCTION AND NATURE OF THE ACTION

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

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

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

25 5. CAPA contends and alleges Defendants produce, manufacture, distribute, sell, and
26 offer for sale, in or into California, glass bottles with exterior decorations containing Lead including,
27 but not limited to, *China Glaze Nail Lacquer with Hardeners, 1749 Tangerine Heat, #85001, UPC 0*
28 *19965 85001 8*, (collectively referred to hereinafter as the “**PRODUCTS**”), without the compliant

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

4 **PARTIES**

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

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

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

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

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

1 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).

4 **STATEMENT OF FACTS**

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

7 23. 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.

10 24. 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
12 Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales
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.

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

19 **FIRST CAUSE OF ACTION**

20 **(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
24 reasonable” warning under Proposition 65.

25 28. DEFENDANTS knew or should have known the PRODUCTS they produce,
26 manufacture, distribute, sell, and offer for sale in California contain Lead.

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.

2 30. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
3 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.

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

14 35. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
15 directly by California voters, consumers exposed to Lead through dermal absorption and ingestion as
16 a result of their use of the PRODUCTS DEFENDANTS sold without a “clear and reasonable” health
17 hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain,
18 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.

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

26 38. As a consequence of the above-described acts, Health & Safety Code § 25249.7(a)
27 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.
28

1 **PRAYER FOR RELIEF**

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;

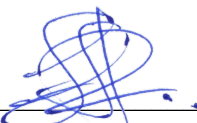
15 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
16 herein; and

17 5. That the Court grant any further relief as the Court may deem just and equitable.

18 Dated: January 24, 2024

Respectfully submitted,

SEVEN HILLS LLP

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21 By: 
22 Laralei S. Paras
23 Attorneys for Plaintiff
24 *Center for Advanced Public Awareness*
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