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8 CENTER FOR ADVANCED PUBLIC AWARENESS

ELECTRONICALLY
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Superior Court of California,
County of San Francisco

03/26/2024
Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

CENTER FOR ADVANCED PUBLIC
AWARENESS,

Plaintiff,

v.

GAMESTOP CORP.; UNCANNY BRANDS,
LLC; and DOES 1-30, inclusive,

Defendants.

Case No. **CGC-24-613386**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violations of Health & Safety Code § 25249.5
et seq. (Proposition 65) Warning Requirement

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS (“CAPA”), acting in the
2 public interest, alleges a cause of action against defendants GAMESTOP CORP., UNCANNY
3 BRANDS, LLC, and Doe Defendants Nos. 1-30 (“DEFENDANTS”) for their violations of Health &
4 Safety Code § 25249.5, *et seq.*, as follows:

5 **INTRODUCTION AND NATURE OF THE ACTION**

6 1. CAPA brings representative action in the public interest on behalf of the citizens of the
7 State of California. By this action, CAPA seeks to enforce the People’s right to be informed of (i) the
8 harms caused by exposures to the heavy metal lead (Pb) (“Lead”), a toxic chemical found in and on
9 mugs and glasses with exterior decorations and (ii) di(2-ethylhexyl) phthalate (“DEHP”) a toxic
10 chemical found in and on coasters manufactured, imported, distributed, sold, and offered for sale by
11 DEFENDANTS in the State of California.

12 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS’ failure to warn
13 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300, *et seq.*
14 (“consumers”) exposed to substances known to the State of California to cause birth defects or other
15 reproductive harm through exposures to Lead when they purchase, use and handle DEFENDANTS’
16 mugs and glassware with exterior decorations and DEHP when they purchase, use and handle
17 DEFENDANTS’ coaster products sold and offered for sale to consumers, end-users and other
18 individuals in California.

19 3. Detectable levels of Lead are found in and on the mugs and glassware exterior
20 decorations DEFENDANTS manufacture, import, sell and distribute for sale in California.

21 4. Detectable levels of DEHP are found in and on the coaster products DEFENDANTS
22 manufacture, import, sell and distribute for sale in California.

23 5. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
24 Health and Safety Code § 25249.5 *et seq.* (“Proposition 65”), it is unlawful for a person in the course
25 of doing business to knowingly and intentionally expose consumers and end-users in California to
26 chemicals known to cause cancer, birth defects or other reproductive harm, without first providing a
27 “clear and reasonable warning” regarding the presence of these chemicals in DEFENDANTS’
28 products and the harms associated with exposures to such chemicals.

1 11. UNCANNY BRANDS manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use to consumers and other individuals in
4 California.

5 12. Doe Defendants 1-10 (“MANUFACTURER DEFENDANTS”) are each a “person in
6 the course of doing business” within the meaning of and as defined by Health and Safety Code
7 §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble,
8 fabricate, and manufacture, or they each imply by their conduct they do so for one or more of the
9 PRODUCTS sold and/or offered for sale or use to consumers and other individuals in California.

10 13. Doe Defendants 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person in the
11 course of doing business within the meaning of and as defined by Health and Safety Code §§ 25249.6
12 and 25249.11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport
13 the PRODUCTS sold and offered for sale to consumers and other individuals in California, or they
14 each imply by their conduct they distribute, transfer, and transport one or more of the PRODUCTS to
15 individuals, businesses, and retailers for sale or use in California.

16 14. Doe Defendants 21-30 (“RETAILER DEFENDANTS”) are each a person in the
17 course of doing business within the meaning of and as defined by Health and Safety Code §§ 25249.6
18 and 25249.11. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
19 consumers and other individuals in California.

20 15. At this time, the true names of Doe DEFENDANTS Nos. 1 through 30, inclusive, are
21 unknown to CAPA, who therefore, sues these defendants by their fictitious names, pursuant to Code
22 of Civil Procedure § 474. Each of the fictitiously named Defendants is responsible in some manner
23 for the acts and occurrences alleged herein and the violations and harms caused thereby. When
24 ascertained, CAPA will identify these Doe Defendants by their true names in an amendment to this
25 Complaint.

26 16. GAMESTOP, UNCANNY BRANDS, MANUFACTURER DEFENDANTS,
27 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are referred to collectively herein
28 as “DEFENDANTS.”

1 **JURISDICTION AND VENUE**

2 17. This Court has jurisdiction pursuant to Health & Safety Code § 25249.7, which allows
3 enforcement by any court of competent jurisdiction. The Superior Courts of the State of California
4 have jurisdiction pursuant to California Constitution Article VI, section 10, which grants the Superior
5 Courts “original jurisdiction in all causes except those given by statute to other trial courts.” The
6 statute under which this action is brought does not specify any other basis of subject matter
7 jurisdiction.

8 18. This Court has jurisdiction over DEFENDANTS because DEFENDANTS, and each of
9 them are a person, firm, corporation, or association that is a citizen of the State of California, does
10 sufficient business in California, has sufficient minimum contacts in California, and/or otherwise
11 purposefully and intentionally avail themselves of the California market through their manufacture,
12 importation, distribution, promotion, marketing and sale of PRODUCTS in California.
13 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by this Court
14 consistent with traditional notions of fair play and substantial justice.

15 19. Venue is proper in the Superior Court for the County of San Francisco, pursuant to
16 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
17 jurisdiction, because CAPA seeks civil penalties against DEFENDANTS, because one or more
18 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
19 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with
20 respect to the PRODUCTS.

21 **REGULATORY BACKGROUND AND LAW**

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

27 21. Under the Act, a “person in the course of doing business” is defined as a business with
28 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from

1 exposing consumers to hazardous chemicals without first giving a “clear and reasonable” warning.
2 Health & Safety Code § 25249.6.

3 22. Exposing consumers to hazardous chemicals means to cause consumers to ingest,
4 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. California
5 Code of Regulations (“Cal. Code Regs.”) Title 27, § 25102(i). An exposure to a hazardous chemical
6 is defined as one that “results from a person’s acquisition, purchase, storage, consumption or other
7 reasonably foreseeable use of a product . . .” Cal. Code Regs. Tit. 27, § 25600(h).

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

11 24. On February 27, 1987, the State of California listed Lead as a chemical known to
12 cause developmental toxicity, male reproductive toxicity, and female reproductive toxicity, and on
13 October 1, 1992 the State of California listed Lead as a chemical known to cause cancer. Lead
14 became subject to the “clear and reasonable warning” requirements one year after each such listing
15 on February 27, 1988 (for reproductive harms) and October 1, 1993 (as a carcinogen), respectively.
16 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

17 25. On October 1, 1992. The State of California listed DEHP as a chemical known to
18 cause cancer, and on January 1, 1988, the State of California listed DEHP as a chemical known to
19 cause developmental and male reproductive toxicity on October 24, 2003. DEHP became subject to
20 the “clear and reasonable warning” requirements one year after each such listing on October 1,
21 1993, (as a carcinogen) and January 1, 1989 (as a carcinogen), respectively. Cal. Code Regs. Tit.
22 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b)

23 **STATEMENT OF FACTS**

24 26. DEFENDANTS sold and offered their PRODUCTS for sale in California without a
25 clear and reasonable warning in violation of Cal. Code Regs. Tit. 27, § 25600, *et seq.*

26 27. DEFENDANTS’ PRODUCTS expose consumers, end-users and other individuals in
27 California to Lead and DEHP at levels requiring a warning under Proposition 65 when they touch,
28 handle or otherwise contact the PRODUCTS during reasonably foreseeable and intended use.

1 PRODUCTS. Such exposures to Lead and DEHP occur through DEFENDANTS’ deliberate and non-
2 accidental participation in the California market.

3 37. The exposures to Lead and DEHP caused by DEFENDANTS and endured by
4 consumers and other individuals in California are not exempt from the “clear and reasonable
5 warning” requirements of Proposition 65.

6 38. DEFENDANTS failure to provide a “clear and reasonable warning” to those
7 consumers and other individuals in California exposed to Lead and/or DEHP through dermal contact
8 and ingestion as a result of their reasonably foreseeable and intended use of the PRODUCTS subjects
9 them to civil penalties and enjoinder of their acts and/or omissions.

10 39. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
11 and other individuals exposed to Lead and DEHP through dermal contact and ingestion results from
12 their use of PRODUCTS DEFENDANTS sold, sell, and offer for sale without a “clear and reasonable
13 warning.” Such consumers and other individuals exposed to Lead and DEHP in California suffer
14 irreparable harms for which they have no plain, speedy, or adequate remedy at law.

15 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
16 sale or use in violation of Health and Safety Code § 25249.6. DEFENDANTS’ violations continue
17 beyond their receipt of CAPA’s Notice. As such, DEFENDANTS’ violations are ongoing and
18 continuous in nature and, unless enjoined, will continue in the future.

19 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of their acts and
20 omissions DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per
21 violation.

22 42. As a consequence of DEFENDANTS’ acts and omissions, Health and Safety Code
23 § 25249.7(a) specifically authorizes this Court to grant the injunctive relief prayed for herein.

24 **PRAYER FOR RELIEF**

25 Wherefore, CAPA prays for judgment against DEFENDANTS, and each of them, as follows:

26 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
27 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
28 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and

1 reasonable warning” to consumers regarding the presence of, and the harms associated with,
2 exposures to Lead and DEHP;

3 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
4 and permanent injunctions mandating DEFENDANTS recall PRODUCTS intended for sale in or into
5 California that do not bear a clear and reasonable health hazard warning;

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

8 4. That the Court award CAPA its reasonable attorneys’ fees and costs of suit; and

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

10 Dated: March 26, 2024

SEVEN HILLS LLP



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12 By: _____

13 Brian C. Johnson
14 Attorneys for Plaintiff
15 CENTER FOR ADVANCED PUBLIC
16 AWARENESS
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