| 1<br>2 | Clifford A. Chanler, State Bar No. 135534<br>CHANLER, LLC<br>72 Huckleberry Hill Road                     | ELECTRONICALLY<br><b>FILED</b><br>Superior Court of California, |  |  |
|--------|---|---|--|--|
| 3      | New Canaan, ČT 06840<br>Telephone: (475) 277-2932   | County of San Francisco 01/12/2024                              |  |  |
| 4      | Facsimile: (203) 702-5011<br>Email: Clifford@ChanlerLLC.com   | Clerk of the Court<br>BY: DAEJA ROGERS                          |  |  |
| 5      | Steven Y. Chen, State Bar No. 243200  |   |  |  |
| 6      | STEVEN Y. CHEN, APLC<br>2650 River Avenue, Unit A   |   |  |  |
| 7      | Rosemead, CA 91702<br>Telephone: (626) 782-5017<br>Facsimile: (626) 307-1657<br>Email: Schen@Schenlaw.com |   |  |  |
| 8      |   |   |  |  |
| 9      | Attorneys for Plaintiff<br>JAY EPPS   |   |  |  |
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| 12     | SUPERIOR COURT OF THE STATE OF CALIFORNIA   |   |  |  |
| 13     | COUNTY OF SAN FRANCISCO CGC-24-611597   |   |  |  |
| 14     | UNLIMITED CIVIL JURISDICTION  |   |  |  |
| 15     |   |   |  |  |
| 16     | JAY EPPS,   | Case No.  |  |  |
| 17     | Plaintiff,  | COMPLAINT FOR CIVIL PENALTIES                                   |  |  |
| 18     | v.  | AND INJUNCTIVE RELIEF   |  |  |
| 19     | SHEIN US SERVICES, LLC,   | (Health & Safety Code \$25240.5 et gag)                         |  |  |
| 20     | Defendant.  | (Health & Safety Code §25249.5 et seq.)                         |  |  |
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|        | COMPLAINT FOR CIVIL DENA  | I TIES AND INIUNCTIVE RELIEF                                    |  |  |
|        | COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF   |   |  |  |
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## NATURE OF THE ACTION

2 This Complaint is a representative action brought by plaintiff Jay Epps in the 1. 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 found in soldering 4 5 wire containing lead, including kits containing such wires (hereafter referred to collectively as "soldering wire") and fishing weights, including kits containing such items (hereafter referred to collectively as "fishing weights") sold and/or shipped by defendant that are purchased by or 8 shipped to citizens in California (the "Products").

9 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn 10 consumers and businesses not covered by California's Occupational Safety Health Act, Labor 11 Code §§6300 et seq. about the risks of exposure to lead present in certain soldering wire and 12 fishing weights that are manufactured, distributed, and offered for sale or use throughout the State 13 of California. Individuals, consumers and businesses not covered by California's Occupational 14 Safety Health Act, Labor Code §§6300 et seq. who purchase, use or handle the Products are 15 referred to hereinafter as "consumers."

16 3. Lead is found at elevated levels in soldering wire and fishing weights that defendant 17 manufactures, imports, distributes, retails or otherwise markets or offers for sale to consumers and 18 other citizens throughout California. Defendant has knowledge of the Products' lead content. 19 Most, if not all, of the sales of the Products were and continue to be offered for purchase and/or 20 transacted through shein.com.

21 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health & Safety Code §§25249.6 et seq. (Proposition 65), "[n]o person in the course of doing 22 23 business shall knowingly and intentionally expose any individual to a chemical known to the state 24 to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such 25 individual..." Health & Safety Code §25249.6.

26 5. Pursuant to Proposition 65, on February 27, 1987, California identified and listed lead as a chemical known to cause birth defects and other reproductive harm. Lead became 27

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subject to the "clear and reasonable warning" requirements of the act one year later on February 1 2 27, 1988. 27 Cal. Code Regs. §27001(b); Health & Safety Code §25249.8 and §25249.10(b).

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6. Defendant manufactures, imports, distributes, and/or offers for sale or use in 4 California in its website, without the mandated health hazard warnings, various products 5 consisting of soldering wire and fishing weights that reference the toxicant "lead" or its elemental 6 symbol, "Pb" in: (i) the product's name; (ii) the product description or information referenced 7 prominently near the online display for the item when sold through defendant's e-commerce 8 platform; (iii) the search "filter," if any, used to market the products online; (iv) the immediate 9 product packaging or container; or (v) any other conspicuous manner likely to be encountered 10 without considerable effort by an online purchaser before payment. Some examples of the 11 Products were identified in the sixty-day notice of violation sent to defendant.

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7. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposures to lead in conjunction with defendant's sales of the Products are violations of Proposition 65 which subject defendant, to enjoinment of such conduct as well as civil penalties for each violation. Health & Safety Code §25249.7(a) and (b)(1).

16 8. For defendant's violations and threatened (i.e., continuing) violations of Proposition 17 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendant to provide 18 purchasers and users of the Products with the required warning regarding specific health hazards 19 associated with exposures to lead. Health & Safety Code §25249.7(a).

20 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties 21 against defendant for their violations of Proposition 65, some of which are ongoing.

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## PARTIES

23 10. Plaintiff Jay Epps is a citizen of the State of California who is dedicated to 24 protecting the health of California citizens through the elimination or reduction of toxic exposures 25 from consumer products, and he brings this action in the public interest pursuant to Health & 26 Safety Code §25249.7(d).

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11.Defendant SHEIN US Services, LLC (SHEIN) is a person in the course of doingbusiness within the meaning of Health & Safety Code §§25249.6 and 25249.11.

3 12. SHEIN imports, distributes, sells, facilitates, and/or offers the Products for sale or 4 use in the State of California, or implies by its conduct that it imports, distributes, facilitates for 5 sale, sells, and/or offers the Products for sale or use in the State of California. SHEIN has offered 6 (and, in many instances, continues to offer) for sale Products supplied to it by entities that are not 7 subject to enforcement under Proposition 65 because: (i) they have fewer than ten employees 8 during all relevant periods; and/or (ii) do not have an agent for process of service in California. 9 Further, in some instances, the Products are shipped to California consumers, either directly (or 10 indirectly through a SHEIN fulfilment center in the United States) by exporters located in foreign 11 countries without offices in the United States, after purchase at SHEIN.com.

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SHEIN is often referred to hereinafter as the "defendant."

## **VENUE AND JURISDICTION**

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

19 15. The California Superior Court has jurisdiction over this action pursuant to
20 California Constitution Article VI, section 10, which grants the Superior Court "original
21 jurisdiction in all causes except those given by statute to other trial courts." The statute under
22 which this action is brought does not specify any other basis of subject matter jurisdiction.

- 16. The California Superior Court has jurisdiction over defendant based on plaintiff's
  information and good faith belief that defendant is a person, firm, corporation has a principal
  office or association that is a citizen of the State of California, has sufficient minimum contacts in
  the State of California, and/or otherwise purposefully avails itself of the California market.
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defendant's purposeful availment renders the exercise of personal jurisdiction (specific, limited or 1 2 both) by California courts consistent with traditional notions of fair play and substantial justice. 3 FIRST CAUSE OF ACTION 4 (Violation of Proposition 65) 5 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein, 6 Paragraphs 1 through 16, inclusive. 7 18. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic 8 Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed 9 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." 10 19. Proposition 65 states, "[n]o person in the course of doing business shall knowingly 11 and intentionally expose any individual to a chemical known to the state to cause cancer or 12 reproductive toxicity without first giving clear and reasonable warning to such individual..." 13 Health & Safety Code §25249.6. 20. 14 On October 31, 2023, plaintiff served a 60-Day Notice of Violation (the Notice), 15 together with the requisite certificate of merit, on SHEIN, the California Attorney General's 16 Office, and the requisite public enforcement agencies alleging that, as a result of defendant's sales 17 of the Products, consumers in California are being exposed to lead resulting from their reasonably 18 foreseeable use of the Products, without them first receiving a "clear and reasonable warning" 19 regarding the reproductive and developmental harms associated with such exposures, as required 20 by Proposition 65. 21 21. Defendant manufactures, imports, distributes, facilitates for sale, sells, and/or offers 22 the Products for sale or use in violation of Health & Safety Code §25249.6, and defendant's 23 violations have continued well beyond their receipt of plaintiff's Notice. As such, defendant's 24 violations are ongoing and continuous in nature and, unless enjoined will continue in the future 25 without any information or written answers that they will cease and desist until compliance is

26 ensured.

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

The Products that defendant's manufactures, imports, distributes, or offers for sale
throughout the State of California cause exposures to lead as a result of the reasonably foreseeable
use of the Products. Such exposures caused by defendant and endured by consumers in California
who purchase, use or handle the Products are not exempt from the "clear and reasonable" warning
requirements of Proposition 65, yet defendant does not provide compliant warnings for the
reproductive toxicity of lead.

24. Defendant has knowledge that the Products they manufacture, import, distribute,
sell, facilitate for sale or offer for sale in California contain lead and, in certain instances in which
"lead" or "Pb" was not referenced on the platform, the overwhelming evidence is that the Product
contained lead.

Lead is present in or on the Products in such a way as to expose consumers through
inhalation, dermal contact and/or ingestion during reasonably foreseeable use.

16 26. The normal and reasonably foreseeable use of the Products has caused, and
17 continues to cause, consumer product exposures to lead as defined by 27 California Code of
18 Regulations §25600.1(e) and other types of exposures set forth in the Notice.

19 27. Defendant knows that the normal and reasonably foreseeable use of the Products
20 exposes individuals to lead through inhalation, dermal contact and/or ingestion.

21 28. Defendant intends that exposures to lead from the reasonably foreseeable use of the
22 Products will occur by their deliberate, non-accidental participation in the manufacture,
23 importation, distribution, sale, and offering of the Products for sale or use to consumers and others
24 in California.

25 29. Defendant failed to provide a "clear and reasonable warning" to those consumers
26 and other citizens in California who have been, or who will be, exposed to lead through
27 inhalation, dermal contact and/or ingestion resulting from their use of the Products.

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| 1  | 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted               |  |  |  |
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| 2  | directly by California voters, consumers exposed to lead, through inhalation, dermal contact         |  |  |  |
| 3  | and/or ingestion as a result of their use of the Products that defendant sold without a "clear and   |  |  |  |
| 4  | reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm for       |  |  |  |
| 5  | which they have no plain, speedy, or adequate remedy at law.   |  |  |  |
| 6  | 31. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-                     |  |  |  |
| 7  | described acts, defendant, and each of them, are liable for a maximum civil penalty of \$2,500 per   |  |  |  |
| 8  | day for each violation (e.g., each unit sale).   |  |  |  |
| 9  | 32. As a consequence of the above-described acts, Health & Safety Code §25249.7(a)                   |  |  |  |
| 10 | also specifically authorizes the Court to grant injunctive relief against defendant.                 |  |  |  |
| 11 | PRAYER FOR RELIEF  |  |  |  |
| 12 | Wherefore, plaintiff prays for judgment against defendant as follows:                                |  |  |  |
| 13 | 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil                        |  |  |  |
| 14 | penalties against defendant, in the amount of \$2,500 per day for each violation;                    |  |  |  |
| 15 | 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and                   |  |  |  |
| 16 | permanently enjoin defendant from manufacturing, importing, distributing, or offering the            |  |  |  |
| 17 | Products for sale or use in California without first providing a "clear and reasonable warning"      |  |  |  |
| 18 | regarding the harms associated with exposures to lead;   |  |  |  |
| 19 | 3. That the Court, pursuant to Health & Safety Code §25249.7(a), issue preliminary                   |  |  |  |
| 20 | and permanent injunctions mandating that defendant recall all Products currently in the chain of     |  |  |  |
| 21 | commerce in California without a "clear and reasonable warning" as defined by 27 California          |  |  |  |
| 22 | Code of Regulations §25600 <i>et seq.</i> , and refund purchasers of the purchase price and shipping |  |  |  |
| 23 | costs;   |  |  |  |
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|    | 6<br>COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF   |  |  |  |
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| 1        | 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and |   |                                       |  |
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| 2        | 5.  | . That the Court grant such other and further relief as may be just and proper. |                                       |  |
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| 4        |   | 11, 2024  |                                       |  |
| 5        | Dated: Janu   | uary 11, 2024   | Respectfully submitted,               |  |
| 6        |   |   | CHANLER, LLC                          |  |
| 7        |   |   | By: Chiplen                           |  |
| 8        |   |   | By: Clifford A. Chanler               |  |
| 9        |   |   | Attorneys for Plaintiff<br>JAY EPPS   |  |
| 10       |   |   | JAY EPPS                              |  |
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|          |   | COMPLAINT FOR   | CIVIL PENALTIES AND INJUNCTIVE RELIEF |  |
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