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SAN FRANCISCO COUNTY  
SUPERIOR COURT

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 AS YOU SOW, a non-profit corporation,

12 CASE NO. CGC-11-509377

13 Plaintiffs,

14 COMPLAINT FOR CIVIL PENALTIES  
15 AND INJUNCTIVE RELIEF

16 v.

17 OLYMPIAN LABS, INC., an Arizona  
18 Corporation and DOES 1 through 50,  
19 inclusive,

20 Defendants.

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22 Plaintiff AS YOU SOW ("AYS") brings this action in the interests of the general public  
23 and, on information and belief, hereby alleges:

24 INTRODUCTION

25 1. This action seeks to remedy Defendants' continuing failure to warn thousands of  
26 consumers in California that they are being exposed to chemicals known to the State of  
27 California to cause cancer and/or reproductive toxicity. Defendants import, manufacture,  
package, distribute, market and/or sell herbs and herbal products, traditional patent medicines,  
bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas,  
liquid extracts, tablets and/or capsules containing lead or lead compounds to wit: AllerG  
Formula 25, Biogra, Cold-X10, Gin-Zing, Olympian Cleanse, Olympian Energy, and Siesta  
(referred to collectively hereinafter as the "PRODUCTS").

2. Lead and lead compounds (collectively, the "LISTED CHEMICALS") are

1 chemicals known to the State of California to cause cancer and/or reproductive toxicity.

2 3. The ingestion of the PRODUCTS causes exposures to the LISTED  
3 CHEMICALS at levels requiring a “clear and reasonable warning” under California’s State  
4 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code (“H&S  
5 Code”) § 25249.5, et seq. (also referred to herein as “Proposition 65”).<sup>1</sup> In spite of knowing that  
6 residents of California were being exposed to these chemicals when they ingest these  
7 PRODUCTS, defendants did not provide clear and reasonable warning to consumers that they  
8 are being exposed to chemicals known to cause cancer, birth defects or other reproductive harm,  
9 as required by Health & Safety Code §25249 et seq.

10 4. By this action, Plaintiff seeks appropriate relief including but not limited to:

- 11 a. Injunctive relief pursuant to Health & Safety Code section 25249.7 to  
12 compel defendants to bring their business practices into compliance with  
13 section 25249.5 et seq. by providing a clear and reasonable warning to  
14 each individual who in the future may be exposed to the above mentioned  
15 toxic chemicals, and by prohibiting the continued import, manufacture,  
16 packaging, distribution, marketing, or sale of the PRODUCTS in  
17 California by Defendants without provision of clear and reasonable  
18 warnings regarding the risks of cancer and/or reproductive toxicity posed  
19 by exposure to the LISTED CHEMICALS through the ingestion of the  
20 PRODUCTS in California by Defendants without provision of clear and  
21 reasonable warnings regarding the risks of cancer and/or reproductive  
22 toxicity posed by exposure to the LISTED CHEMICALS through the  
23 ingestion of the PRODUCTS;
- 24 b. Assessing civil penalties in the amount of \$2,500 per day per violation to  
25 remedy Defendant’s ongoing failure to provide clear and reasonable  
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27 <sup>1</sup>All statutory and regulatory references herein are to California law.

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warnings to thousands of individuals that they are being exposed and  
continue to be exposed to LISTED CHEMICALS through the ingestion  
of the PRODUCTS.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the defendants because they are  
businesses that have sufficient minimum contacts in California and within the City and  
County of San Francisco. Defendants intentionally availed themselves of the California  
and San Francisco County markets for the PRODUCTS. It is thus consistent with  
traditional notions of fair play and substantial justice for the San Francisco Superior Court  
to exercise jurisdiction over them.

6. Venue is proper in this Court because acts of which plaintiff complains  
occurred within the County of San Francisco during the times relevant to this Complaint.

PARTIES

7. Plaintiff AS YOU SOW (“AYS”) is a 501 (c) (3) non-profit corporation  
dedicated to, among other causes, the protection of the environment, toxics reduction, the  
promotion of and improvement of human health, the improvement of worker and consumer  
rights, environmental education and corporate accountability. Plaintiff is based in San Francisco,  
California and was incorporated in 1992 under the laws of the State of California. AYS brings  
this enforcement action in the public interest pursuant to Health & Safety Code §25249.7(d).

8. Defendant Olympian Labs, Inc. is a person within the meaning of Health &  
Safety Code § 25249.11.

9. Defendant Olympian Labs, Inc. , an active Arizona corporation, imports,  
manufactures, packages, distributes, markets and/or sells one or more of the PRODUCTS for  
sale or use in California or otherwise causes or contributes to exposures within the meaning of  
Health & Safety Code § 25249.6, et seq. to the LISTED CHEMICALS from the PRODUCTS in  
California, including the City and County of San Francisco.



1 statute may be enjoined in a court of competent jurisdiction. (Health & Safety Code § 25249.7.)  
2 The phrase “threaten to violate” is defined to mean, “to create a condition in which there is a  
3 substantial likelihood that a violation will occur.” (Health & Safety Code § 25249.11(e).)  
4 Violators are liable for civil penalties of up to \$2500 per day for each such violation. (Health  
5 & Safety Code § 25249.7.)

#### 6 FACTUAL BACKGROUND

7 17. On February 27, 1987, the State of California officially listed the chemical lead  
8 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
9 requirement one year later and was therefore subject to the “clear and reasonable” warning  
10 requirements of Proposition 65 beginning on February 27, 1988. (22 California Code of  
11 Regulations (“CCR”) § 12000, et seq.; Health & Safety Code § 25249.5, et seq.)

12 18. On October 1, 1992, the State of California officially listed the chemicals lead  
13 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
14 subject to the warning requirement one year later and were therefore subject to the “clear and  
15 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. (22 CCR §  
16 12000, et seq.; Health & Safety Code § 25249.6, et seq.)

17 19. Plaintiff, in San Francisco, ordered the PRODUCTS from defendants.  
18 Defendants processed plaintiff’s order and shipped the PRODUCTS to San Francisco. Plaintiff  
19 sent the PRODUCTS to a certified laboratory for analysis. The results of the analysis showed  
20 concentrations of lead and/or lead compounds in quantities which require a warning pursuant to  
21 Proposition 65.

22 20. Plaintiff is informed and believes, and based on such information and belief  
23 alleges, that one or more of the Defendants’ PRODUCTS have been sold to and/or ingested by  
24 individuals in California without clear and reasonable warning since February 3, 2006.  
25 Defendants continue to offer the PRODUCTS for sale in California without the requisite  
26 warning information.



1 *inter alia*, the following information: the name, address, and telephone number of the noticing  
2 individual; the name of the alleged violator; the statute violated; the approximate time period  
3 during which violations occurred; and descriptions of the violations including the chemicals  
4 involved, the routes of toxic exposure, and the specific products and type of products causing  
5 the violations. The named defendants and the California Attorney General were provided copies  
6 of the 60-Day Notice by certified mail. Additionally, the named defendants were provided a  
7 copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986  
8 (Proposition 65): A Summary," which is also known as Appendix A to Title 22 of CCR §  
9 12903, as well as a Certificate of Merit.

10 29. The appropriate public enforcement agencies have failed to commence and  
11 diligently prosecute a cause of action under Health & Safety Code § 25249.5, et seq. against  
12 Defendants based on the allegations herein.

13 30. By committing the acts alleged in this Complaint, Defendants, at all times  
14 relevant to this action, and continuing through the present, have violated Health & Safety Code  
15 § 25249.6 by, in the course of doing business, knowingly and intentionally exposed individuals  
16 who ingest the PRODUCTS to the LISTED CHEMICALS, without first providing a clear and  
17 reasonable warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and  
18 25249.11(f).

19 31. By the above-described acts, Defendants are liable, pursuant to Health & Safety  
20 Code § 25249.7(b), for a civil penalty of up to \$2500 per day for each unlawful exposure to a  
21 LISTED CHEMICAL from the PRODUCTS.

22 32. Continuing commission by Defendants, of the acts alleged above will irreparably  
23 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
24 adequate remedy at law.

25 Wherefore, plaintiff prays judgment against Defendant, as set forth hereafter.

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