

JUL 30 2014

CLERK OF THE SUPERIOR COURT

By Gina Baker Deputy

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MARK MOORBERG

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

12 MARK MOORBERG,

13 Plaintiff,

14 v.

15 OLYMPIC MOUNTAIN AND MARINE
16 PRODUCTS, INC.; and DOES 1-150,
inclusive,

17 Defendants.

Case No. RG14735027

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

NATURE OF THE ACTION

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2 1. This Complaint is a representative action brought by plaintiff MARK
3 MOORBERG in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed about exposures to Lead, a toxic chemical that is found in and on
5 the exterior designs of glass bath salt containers that are sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risks of exposures to Lead present in and on the glass bath
8 salt containers with exterior designs manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

10 3. Detectable levels of lead are commonly found in and on glass bath salt containers
11 with exterior designs that defendants import, manufacture, distribute, ship, sell and/or offer for
12 sale to consumers throughout the State of California.

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

18 5. On February 27, 1987, California listed Lead pursuant to Proposition 65 as a
19 chemical that is known to cause birth defects or other reproductive harm. Lead became subject
20 to the “clear and reasonable warning” requirements of the act one year later on February 27,
21 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. Defendants manufacture, distribute, import, sell, and offer for sale without
23 warning in California, glass bath salt containers with exterior designs containing Lead,
24 including, but not limited to, the *Morgan Childs Premium Lavender Luxury Bath Salts with*
25 *Pure Essential Oils, #1332556*. All such glass bath salt containers with exterior designs
26 containing Lead are referred to collectively hereinafter as the “PRODUCTS.” Lead is referred
27 to hereinafter as the “LISTED CHEMICAL.”

1 7. Defendants' failure to warn workers, consumers, and other individuals in
2 California of the harms associated with exposures to the LISTED CHEMICAL in conjunction
3 with defendants' sales of the PRODUCTS containing the LISTED CHEMICAL constitute
4 violations of Proposition 65, and subject defendants to enjoinder of such conduct, as well as
5 civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

6 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
7 permanent injunctive relief to compel defendants to provide purchasers or users of the
8 PRODUCTS with the required warning regarding the health hazards associated with exposures
9 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

10 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
11 penalties against defendants, and each of them, for each violation of Proposition 65.

12 **PARTIES**

13 10. Plaintiff MARK MOORBERG is a citizen of the State of California who is
14 dedicated to protecting the health of California citizens through the elimination or reduction of
15 harmful exposures to toxic chemicals from consumer products. He brings this action in the
16 public interest pursuant to Health and Safety Code section 25249.7(d).

17 11. Defendant OLYMPIC MOUNTAIN AND MARINE PRODUCTS, INC.
18 ("OLYMPIC") is a person in the course of doing business within the meaning of Health and
19 Safety Code sections 25249.6 and 25249.11.

20 12. OLYMPIC manufactures, imports, distributes, sells, and/or offers the PRODUCTS
21 for sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
22 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

23 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
24 person in the course of doing business within the meaning of Health and Safety Code sections
25 25249.6 and 25249.11.

26 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
27 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
5 and 25249.11.

6 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
7 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
8 in the State of California.

9 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
10 the course of doing business within the meaning of Health and Safety Code sections 25249.6
11 and 25249.11.

12 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
13 State of California.

14 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
15 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
16 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
17 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
18 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

19 20. OLYMPIC, MANUFACTURER DEFENDANTS, DISTRIBUTOR
20 DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively referred to as
21 “DEFENDANTS.”

22 **VENUE AND JURISDICTION**

23 21. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure
24 sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because
25 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
26 wrongful conduct occurred, and continue to occur, in this county, and/or because
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1 DEFENDANTS conducted, and continue to conduct, business in Alameda County with respect
2 to the PRODUCTS.

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

7 23. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
9 association that is a citizen of the State of California, has sufficient minimum contacts in the
10 State of California, and/or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 - Against All Defendants)**

15 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 23, inclusive.

17 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm.”

21 26. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual” Health & Safety Code § 25249.6.

25 27. On April 16, 2014, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to OLYMPIC and certain public enforcement
27 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
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1 LISTED CHEMICAL, workers, consumers, and other individuals in the State of California
2 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use
3 of the PRODUCTS, without the individual purchasers and users first having received a “clear
4 and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

5 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
6 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
7 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
8 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
9 continuous in nature, and will continue to occur in the future.

10 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
11 enforcement agencies have failed to commence and diligently prosecute a cause of action
12 against DEFENDANTS under Proposition 65.

13 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
15 reasonably foreseeable uses of these products result in exposures that require a “clear and
16 reasonable” warning under Proposition 65.

17 31. DEFENDANTS knew or should have known that the PRODUCTS they
18 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
19 CHEMICAL.

20 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
21 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

22 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
23 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
24 defined by title 27 of the California Code of Regulations, section 25602(b).

25 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
26 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
27 and/or ingestion.

1 35. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
2 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental
3 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
4 use to individuals in the State of California.

5 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
6 workers, consumers and other individuals in California not covered by California’s
7 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,
8 exposed to the LISTED CHEMICAL.

9 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
10 directly by California voters, workers, consumers, and other individuals exposed to the LISTED
11 CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable
12 uses of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,”
13 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
14 adequate remedy at law.

15 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
16 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
17 for each violation.

18 39. As a consequence of the above-described acts, Health and Safety Code
19 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
20 DEFENDANTS.

21 **PRAYER FOR RELIEF**

22 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

- 23 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
24 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
25 each violation;
- 26 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
27 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
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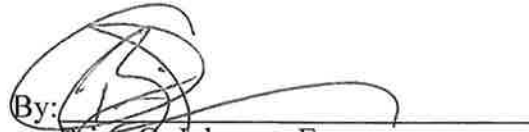
1 offering the PRODUCTS for sale or use in California without first providing a “clear and
2 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
3 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

4 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

5 4. That the Court grant such other and further relief as may be just and proper.

6 Dated: July 29, 2014

7 Respectfully Submitted,
8 THE CHANLER GROUP

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10 By: 

11 Brian C. Johnson, Esq.
12 Attorneys for Plaintiff
13 MARK MOORBERG
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