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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
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12 JOHN MOORE,

13 Plaintiff,

14 v.

15 ARTLAND, INC.; NORDSTROM, INC.; and
16 DOES 1-150, inclusive,

17 Defendants.

Case No. RG15759001

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff JOHN MOORE in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed about exposures to lead, a toxic chemical that is found in the exterior designs of
5 drinking glasses 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 exterior
8 designs of drinking glasses manufactured, distributed, and offered for sale or use to consumers
9 throughout the State of California.

10 3. Detectable levels of lead are commonly found in and on the exterior designs of
11 drinking glasses that defendants import, manufacture, distribute, ship, sell and offer for sale to
12 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, pursuant to Proposition 65, California identified and listed
19 lead as a chemical known to cause birth defects or other reproductive harm. Lead became
20 subject to the “clear and reasonable warning” requirements of the act one year later on February
21 27, 1988. (Cal. Code Regs., Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b).) Lead is referred to hereinafter as the (“LISTED CHEMICAL”).

23 6. Defendants manufacture, distribute, import, sell, and offer for sale without
24 warning in California, drinking glasses with exterior designs containing the LISTED
25 CHEMICAL, including, but not limited to, the *Upcycle Glass Set, Fun in the Sun, #0755 2296*
26 *3380, UPC Nos. 8 35452 11114 3 and 8 35452 11116 7*. All such drinking glasses with exterior
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1 designs containing the LISTED CHEMICAL are referred to collectively hereinafter as the
2 (“PRODUCTS”).

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

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

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

14 **PARTIES**

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

19 11. Defendant Artland, Inc. (“ARTLAND”) is a person in the course of doing
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

25 13. Defendant Nordstrom, Inc. (“NORDSTROM”) is a person in the course of doing
26 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
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1 14. NORDSTROM manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Code sections
7 25249.6 and 25249.11.

8 16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
9 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
10 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
11 California.

12 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
13 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
14 and 25249.11.

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

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

21 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
22 State of California.

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
2 harm.”

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

7 29. On September 30, 2014, plaintiff’s sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to ARTLAND, NORDSTROM, and the requisite
9 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
10 PRODUCTS containing the LISTED CHEMICAL, workers, consumers and other individuals in
11 the State of California are being exposed to the LISTED CHEMICAL resulting from their
12 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
13 having received a “clear and reasonable warning” regarding such toxic exposures, as required
14 by Proposition 65.

15 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
19 continuous in nature, and, unless enjoined, will continue to occur in the future.

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

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

1 33. DEFENDANTS knew or should have known that the PRODUCTS they
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
3 CHEMICAL.

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

6 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
7 continues to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
8 defined by title 27 of the California Code of Regulations, section 25602(b).

9 36. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
10 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
11 and/or ingestion.

12 37. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the
13 reasonably foreseeable use of the PRODUCTS to occur by their deliberate, non-accidental
14 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
15 use to individuals in the State of California.

16 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
17 workers, consumers and other individuals in California who have been, or will be, exposed to
18 the LISTED CHEMICAL.

19 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
20 directly by California voters, consumers, and other individuals exposed to the LISTED
21 CHEMICAL through dermal contact and/or ingestion, resulting from the reasonably foreseeable
22 use of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable warning,” have
23 suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or
24 adequate remedy at law.

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