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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION

11  
12 JOHN MOORE,  
13 Plaintiff,  
14  
15 v.  
16 ARTLAND, INC.; NORDSTROM, INC.; and  
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.

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 22. ARTLAND, NORDSTROM, MANUFACTURER DEFENDANTS,  
2 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively  
3 referred to as “DEFENDANTS.”

4 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

23 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
24 Paragraphs 1 through 25, inclusive.

25 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
26 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be  
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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.

