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**ENDORSED
FILED
ALAMEDA COUNTY**
JUN 07 2018
CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER
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EXEMPT FROM FILING FEES
PURSUANT TO GOV. CODE § 6103

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

NUTRACEUTICAL CORPORATION, a Delaware corporation; GRACELEIGH, INC. (dba SAMMY'S MILK), a California corporation; and DOES 1-50, inclusive.

Defendants.

Case No. **RG 18907841**
COMPLAINT FOR CIVIL PENALTIES, INJUNCTIVE RELIEF AND OTHER EQUITABLE RELIEF

(Health and Safety Code, §§ 25249.5 et seq.; Business and Professions Code, §§ 17200 et seq. and 17500 et seq.)

Verified answer required pursuant to C.C.P. § 446

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1 Plaintiff, the People of the State of California, by and through Xavier Becerra, Attorney
2 General of the State of California; Nancy E. O'Malley, District Attorney of Alameda County;
3 Edward S. Berberian, District Attorney of Marin County; Dean Flippo, District Attorney of
4 Monterey County; Allison Haley, District Attorney of Napa County; Tony Rackauckas, District
5 Attorney of Orange County; Jeffrey F. Rosen, District Attorney of Santa Clara County; Jeffrey
6 Rosell, District Attorney of Santa Cruz County; Stephanie Bridgett, District Attorney of Shasta
7 County; Krishna Abrams, District Attorney of Solano County; and Jill R. Ravitch, District
8 Attorney of Sonoma County hereby allege:

9 I. INTRODUCTION

10 1. This complaint seeks to remedy the Defendants' unfair business practices, false
11 advertising, and failure to warn California consumers of the exposures to lead in toddler formula
12 products that the Defendants sell, manufacture, and/or distribute for sale in the State of California.
13 As discussed below, this complaint concerns two formulas: Sammy's Milk Free-Range Goat
14 Milk Toddler Formula (Sammy's Milk), manufactured and sold by defendant Graceleigh, Inc.,
15 dba Sammy's Milk, and Peaceful Planet Toddler Supreme Formula (Peaceful Planet),
16 manufactured and sold by defendant Nutraceutical Corporation. Hereafter in this complaint,
17 Sammy's Milk and Peaceful Planet together will be referred to as the "Products."

18 2. The Products contain levels of lead that result in exposure above the Provisional Total
19 Tolerable Intake Level for lead of six micrograms per day ("ug/day") set by the United States
20 Food and Drug Administration, applicable to children six years and younger.

21 3. Each of the Products is adulterated within the meaning of the California Sherman
22 Food, Drug, and Cosmetic Law ("Sherman Law"), because, due to high lead levels, each contains
23 a "poisonous or deleterious substance that may render it injurious to health of man or any other
24 animal that may consume it." (Health & Saf. Code, § 110545.) Consequently, neither of the
25 Products may be manufactured or sold in California. (Health & Saf. Code, § 110620.) Sales of
26 the Products in California therefore constitute unfair business practices that violate Business and
27 Professions Code, section 17200.
28

1 County; Krishna Abrams, District Attorney of Solano County; and Jill R. Ravitch, District
2 Attorney of Sonoma County (collectively referred to as “Plaintiff” or the “People”).

3 10. The Attorney General and District Attorneys may bring actions to enforce Proposition
4 65 (Health & Saf. Code, § 25249.7, subd. (c)); and to prohibit unfair and unlawful business
5 practices and false/misleading advertising (Bus. & Prof. Code, §§ 17200, 17204, 17206 and
6 17535 and 17536). The People bring this action under the authority granted to them by
7 Proposition 65, the False Advertising Law, and the Unfair Competition Law.

8 11. Defendant Nutraceutical Corporation (hereafter “Nutraceutical”) is a corporation
9 organized and existing under the laws of the State of Delaware, with its principal place of
10 business in Park City, Utah. Plaintiff believes that evidence will show, after a reasonable
11 opportunity for further investigation or discovery, that Nutraceutical employed ten or more
12 persons during the applicable period of the statute of limitations. Nutraceutical is a “person in the
13 course of doing business” within the meaning of Health and Safety Code, section 25249.11
14 (Proposition 65) and section 109995 (the Sherman Law). Nutraceutical is also “a person” within
15 the meaning of Business and Professions Code, section 17201 (Unfair Competition Law) and
16 section 17506 (False Advertising Law). Nutraceutical manufactures and/or sells the Peaceful
17 Planet formula and has offered it for sale within California, even though the product is adulterated
18 within the meaning of the Sherman Law, and without providing the clear and reasonable warning
19 required by Proposition 65. Nutraceutical has made false and legally prohibited advertising
20 claims with respect to the Peaceful Planet formula. Nutraceutical made these claims with the
21 express purpose of promoting sales of the Peaceful Planet formula within California and inducing
22 California consumers to purchase it.

23 12. Defendant Graceleigh, Inc., dba Sammy’s Milk (hereafter “Graceleigh”) is a
24 corporation organized and existing under the laws of the State of California, with its principal
25 place of business in Newport Beach, California. Plaintiff believes that evidence will show, after a
26 reasonable opportunity for further investigation or discovery, that Graceleigh employed ten or
27 more persons during the applicable period of the statute of limitations. Graceleigh is a “person in
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1 the course of doing business” within the meaning of Health and Safety Code, section 25249.11
2 (Proposition 65) and section 109995 (the Sherman Law). Graceleigh is also “a person” within the
3 meaning of Business and Professions Code, section 17201 (Unfair Competition Law) and section
4 17506 (False Advertising Law). Graceleigh manufactures and/or sells the Sammy’s Milk formula
5 and has offered it for sale within California, even though the Product is adulterated within the
6 meaning of the Sherman Law, and without the clear and reasonable warning required under
7 Proposition 65. Graceleigh has made false and legally prohibited advertising claims with respect
8 to the Sammy’s Milk formula. Graceleigh made these claims with the express purpose of
9 promoting sales of the Sammy’s Milk formula within California and inducing California
10 consumers to purchase it.

11 13. Defendant DOES 1-50, their agents, employees, officers, and others acting on their
12 behalf, as well as subsidiaries, affiliates, and other entities controlled by DOES 1 through 50
13 (hereafter collectively referred to as “DOES 1 through 50”) are business entities or persons
14 engaged in the import, manufacture, sale, distribution and/or advertising of the Products. DOES
15 1 through 50 participated in some or all of the acts alleged herein, including that as part of their
16 business activities, each of Does 1 through 50 has: (1) sold the Products that are adulterated with
17 high levels of lead; (2) exposed consumers to lead without first providing the clear and reasonable
18 warning required by Proposition 65; and/or (3) made false and misleading claims regarding the
19 safety and health effects of the Products for the purpose of inducing California consumers to
20 purchase them. The names and identities of defendants DOES 1 through 50 are unknown to the
21 People, and when they are known this complaint will be amended to state their names and
22 identities.

23 III. JURISDICTION AND VENUE

24 14. This Court has jurisdiction over this matter pursuant to California Constitution, Article
25 VI, section 10, because this case is a cause not given by statute to other trial courts.

26 15. This Court has jurisdiction over each Defendant named above, because each is a
27 business entity that does sufficient business and/or has sufficient minimum contacts in California,
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1 or otherwise intentionally avails itself of the California market through the manufacture,
2 distribution, sale, and/or marketing of products and services in California, to render the exercise
3 of jurisdiction over it by the California courts consistent with traditional notions of fair play and
4 substantial justice.

5 16. Venue is proper in this Court because the causes of action, or parts thereof, arise in
6 Alameda County because Defendants' Products are sold and consumed in this county.

7 **IV. STATUTORY BACKGROUND**

8 **A. The Sherman Food, Drug and Cosmetics Law**

9 17. The Sherman Law prohibits the sale, manufacture or offer for sale of any food which
10 is adulterated under the definition of Health and Safety Code, section 110545. (Health & Saf.
11 Code, § 110620.)

12 18. A food is adulterated within the meaning of Health and Safety Code, section 110545 if
13 it bears or contains any poisonous or deleterious substance that may render it injurious to health
14 of man or any other animal that may consume it.

15 19. The Sherman Law protects consumers, among other things, against false advertising
16 and the sale of foods that are adulterated or misbranded. (Health & Saf. Code, § 109875 *et seq.*)
17 Pursuant to the Sherman Law, it is "unlawful for any person to disseminate any false
18 advertisement of any food, drug, device, or cosmetic. An advertisement is false if it is false or
19 misleading in any particular." (*Id.*, §110390.)

20 20. The Sherman Law further provides that it is "unlawful for any person to manufacture,
21 sell, deliver, hold, or offer for sale any food, drug, device, or cosmetic that is falsely advertised."
22 (*Id.*, §110395.)

23 21. The Sherman Law also renders it unlawful "for any person to advertise any food, drug,
24 device, or cosmetic that is adulterated or misbranded." (*Id.*, § 110398.)

25 **B. Proposition 65**

26 22. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
27 passed as "Proposition 65" by a vote of the people in November 1986.
28

1 23. The clear and reasonable warning requirement of Proposition 65 is contained in Health
2 and Safety Code, section 25249.6, which provides:

3 No Person in the course of doing business shall knowingly and
4 intentionally expose any individual to a chemical known to the state to
5 cause cancer or reproductive toxicity without first giving clear and
6 reasonable warning to such individual, except as provided in Section
7 25249.10.

8 24. An exposure to a chemical in a consumer product is one “which results from a
9 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
10 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
11 Regs., tit. 27, § 25602, subd. (b).)

12 25. Proposition 65 establishes a procedure by which California is to develop a list of
13 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §
14 25249.8.)

15 26. Any person “violating or threatening to violate” the statute may be enjoined in any
16 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate”
17 means “to create a condition in which there is a substantial probability that a violation will
18 occur.” (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to
19 \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

20 27. Actions to enforce the law “may be brought by the Attorney General in the name of
21 the People of the State of California, [or] by a district attorney” (*Id.*, § 25249.7, subd. (c).)

22 **C. The False Advertising Law**

23 28. Business and Professions Code, section 17500 provides that it is unlawful for any
24 person, “with the intent directly or indirectly to dispose of real or personal property . . . to make
25 or disseminate or cause to be made . . . any statement, concerning that real or personal property
26 . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable
27 care should be known, to be untrue or misleading.”

28 29. Section 17535 authorizes the Attorney General and District Attorneys to seek an
injunction to prevent such untrue or misleading statements, and to provide restitution to the

1 victims of such statements. Section 17536 provides that any person violating section 17500
2 “shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for
3 each violation, which shall be assessed and recovered in a civil action brought in the name of the
4 people of the State of California by the Attorney General or by any district attorney. . . .” These
5 civil penalties are cumulative to those obtained under Section 17200.

6 **D. The Unfair Competition Law**

7 30. California Business and Professions Code, section 17200 provides that “unfair
8 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section
9 17203 of the Business and Professions Code provides that “(a)ny person performing or
10 proposing to perform an act of unfair competition within this state may be enjoined in any court
11 of competent jurisdiction.”

12 31. Section 17206, subdivision (a) provides that any person violating Section 17200 “shall
13 be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each
14 violation, which shall be assessed and recovered in a civil action brought in the name of the
15 people of the State of California by the Attorney General or by any District Attorney.” Under
16 Section 17205, these penalties are “cumulative to each other and to the remedies or penalties
17 available under all other laws of this state.”

18 **V. FACTS**

19 32. Lead was placed on the list of chemicals known to the State of California to cause
20 birth defects or other reproductive harm on February 27, 1987. (Cal. Code Regs., tit. 27, §
21 27001, subd. (c).)

22 33. Lead was placed on the list of chemicals known to the State of California to cause
23 cancer on October 1, 1992. (*Ibid.*)

24 34. Lead is a neurotoxin that bioaccumulates in humans. Recent studies have determined
25 that lead can damage the human nervous system at lower exposure levels than previously
26 believed. Children are among the most vulnerable to lead exposure. Children who are exposed
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1 to lead may suffer from lowered IQs, behavioral issues, slowed body growth, hearing problems,
2 kidney damage, and other serious health effects.

3 35. The United States Food and Drug Administration has set Provisional Total Tolerable
4 Intake Levels for lead, which represent the maximum tolerable daily lead intake to which a
5 person should be exposed from all sources. The Provisional Total Tolerable Intake Level is 6
6 micrograms of lead per day for children 6 or younger.

7 36. Consumption of each of the Products results in exposures to lead above the
8 Provisional Total Tolerable Intake Levels for children 6 or younger and the Products are
9 therefore adulterated pursuant to the Sherman Law.

10 37. The Graceleigh product Sammy’s Milk has caused and continues to cause exposures
11 to lead.

12 38. The Nutraceutical product Peaceful Planet is labelled on the front of the container as
13 “formula.”

14 39. The Nutraceutical product Peaceful Planet has caused and continues to cause
15 exposures to lead.

16 40. At all times material to this complaint, Graceleigh has falsely advertised and made
17 other misrepresentations to California consumers regarding Sammy’s Milk. Among other
18 things, it advertised on its website that: the ingredients of Sammy’s Milk were “selected for
19 purity” and that the Sammy’s Milk is “clean nutrition.”

20 41. At all times material to this complaint, Nutraceutical has falsely advertised and made
21 other misrepresentations to California consumers regarding Peaceful Planet. Among other
22 things, it advertised on the product labelling that Peaceful Planet is “CLEAN!” and “PURE!”

23 42. At all times material to this complaint, Defendants, and each of them, knew their
24 respective Products contained lead.

25 43. Notwithstanding this knowledge, all Defendants—at all times material to this
26 complaint—advertised, manufactured, marketed, distributed, and/or sold the Products in
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1 California, causing toddlers to be exposed to lead. Defendants continue to advertise,
2 manufacture, market, distribute, and/or sell the Products in California.

3 44. These exposures are knowing and intentional because they are the result of
4 Defendants' deliberate act of advertising, manufacturing, marketing, distributing, and/or selling
5 the Products known to contain lead to consumers, with the knowledge that the intended use of
6 these Products would result in exposures to lead.

7 45. At all times material to this complaint, Defendants failed to provide clear and
8 reasonable warning that the use of the Products results in exposure to lead, a chemical known to
9 the State of California to cause cancer and birth defects or other reproductive harm, and no such
10 warning was provided by any other person to the individuals who suffered such exposures.

11 **FIRST CAUSE OF ACTION**
12 **(Against Defendants for Violation of Proposition 65)**

13 46. The People re-allege paragraphs 1 through 45, as if fully set forth herein.

14 47. By committing the acts alleged above, Defendants, and each of them, in the course of
15 doing business, knowingly and intentionally exposed individuals to lead, a chemical known to
16 the state of California to cause cancer and reproductive toxicity, without first giving clear and
17 reasonable warning to such individuals, within the meaning of Health and Safety Code, section
18 25249.6.

19 **SECOND CAUSE OF ACTION**
20 **(Against Defendants For Violations of**
21 **Business and Professions Code, Section 17500 for**
22 **False or Misleading Statements)**

23 48. Paragraphs 1 through 47 are re-alleged as if fully set forth herein.

24 49. At all times material to this complaint, each Defendant has engaged in making,
25 disseminating, or causing to be made or disseminated untrue or misleading statements within the
26 meaning of Business and Professions Code, section 17500 to induce California consumers to
27 purchase and consume the Products, by committing the acts alleged above.
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- 1 a. Graceleigh’s untrue or misleading representations include, but are not limited
2 to, statements on the Sammy’s Milk website that the ingredients of Sammy’s
3 Milk were “selected for purity” and that the Sammy’s Milk is “clean nutrition.”
4 b. Nutraceutical’s untrue or misleading representations include, but are not limited
5 to, statements on the product labelling that Peaceful Planet is “CLEAN!” and
6 “PURE!”

7 50. Each Defendant knew, or in the exercise of reasonable care should have known, that
8 these statements were untrue or misleading at the time that they were made. Said violations
9 render each Defendant liable to the People for civil penalties of up to \$2,500 for each violation,
10 and provide the basis for other remedies.

11 **THIRD CAUSE OF ACTION**
12 **(Against Defendants for Violations of**
13 **Business and Professions Code, Section 17200 for**
14 **Unlawful Business Practices)**

15 51. The People re-allege Paragraphs 1 through 50, as if fully set forth herein.

16 52. By committing the acts alleged above, at all times material to this complaint, each
17 Defendant has engaged in unlawful business practices that constitute unfair competition within
18 the meaning of Business and Professions Code, section 17200. Such acts include, but are not
19 limited to:

- 20 • Violating Proposition 65 (Health and Safety Code, section 25249.6) as alleged
21 above in the first cause of action;
- 22 • Violating Business and Professions Code, section 17500 as alleged above in the
23 second cause of action;
- 24 • Violating the Sherman Law (Health and Safety Code, § 110620) by
25 manufacturing and/or selling the Products, which are adulterated under the
26 definition of Health and Safety Code, section 110545.

- 1 • Violating the Sherman Law (Health and Safety Code, § 110390) by
2 disseminating false and/or misleading advertisements that accompany the
3 Products when sold to California consumers.
- 4 • Violating the Sherman Law (Health and Safety Code, §110395) by
5 manufacturing and/or selling the Products, which are falsely advertised.
- 6 • Violating the Sherman Law (Health and Safety Code, § 110398) by advertising
7 the Products to California consumers when the Products are adulterated under
8 the definition of Health and Safety Code, section 110545.

9 53. By committing the acts alleged above, Defendants are liable to the People for civil
10 penalties of up to \$2,500 for each violation.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, the People respectfully request that the Court:

- 13 1. Order civil penalties against each Defendant according to proof, pursuant to all causes
14 of action;
- 15 2. Permanently enjoin Defendants, their agents, employees, and all other persons or
16 entities, corporate or otherwise, in active concert or participation with any of them, from making
17 any untrue or misleading statements in violation of Business and Professions Code, section
18 17500, including, but not limited to, the untrue or misleading statements alleged in this complaint,
19 under the authority of Business and Professions Code, section 17535;
- 20 3. Permanently enjoin Defendants, their agents, employees, and all other persons or
21 entities, corporate or otherwise, in active concert or participation with any of them, from engaging
22 in unfair competition as defined in Business and Professions Code, section 17200, including, but
23 not limited to, the acts and practices alleged in this complaint, under the authority of Business and
24 Professions Code, section 17203;
- 25 4. Permanently enjoin Defendants, their agents, employees, and all other persons or
26 entities, corporate or otherwise, in active concert or participation with any of them, from violating
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1 Health and Safety Code, section 25249.6, by exposing persons within the State of California to
2 lead caused by the ingestion of their Products, without providing clear and reasonable warning;

3 5. Make such orders or judgments as may be necessary, including preliminary injunctive
4 and ancillary relief, to prevent the use or employment by any Defendant, its agents, employees,
5 and all other persons or entities, corporate or otherwise, in active concert or participation with any
6 of them, of any practice that violates Business and Professions Code, section 17500, or that may
7 be necessary to restore to any person in interest any money or property, real or personal, which
8 may have been acquired by means of any such practice, under the authority of Business and
9 Professions Code, section 17535 and any other applicable laws;

10 6. Make such orders or judgments as may be necessary, including preliminary injunctive
11 and ancillary relief, to prevent the use or employment by any Defendant, its agents, employees,
12 and all other persons or entities, corporate or otherwise, in active concert or participation with any
13 of them, of any practice that constitutes unfair competition or as may be necessary to restore to
14 any person in interest any money or property, real or personal, which may have been acquired by
15 means of any such practice, under the authority of Business and Professions Code, section 17203
16 and any other applicable laws;

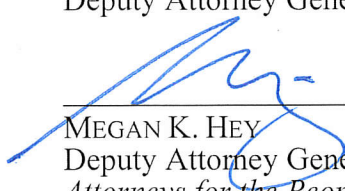
17 7. Award the People costs of suit, including costs of investigation;

18 8. Grant such other and further relief as the court deems just and proper.

19 Dated: June 7, 2018

Respectfully Submitted,

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