

1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this action as a private attorney general and in the public interest pursuant to Health & Safety Code Section 25249.7 (d). This complaint seeks injunctive and declaratory relief and civil penalties to

**INTRODUCTION**

**I**

Plaintiff Environmental Research Center hereby alleges:

**Defendants.**

**AVRVEDIC CONCEPTS, LTD. and  
DOES 1-100**

[Miscellaneous Civil Complaint (42)]  
Proposition 65, Health & Safety Code  
Section 25249.5 et seq.]

**v.**

**Plaintiff,**

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF  
AND CIVIL PENALTIES**

**ENVIRONMENTAL RESEARCH CENTER,**  
a California non-profit corporation

Case No. *W* 10545713

**COUNTY OF ALAMEDA**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

Attorney for Plaintiff Environmental Research Center

Michael Freund SBN 99687  
Law Office of Michael Freund  
1915 Addison Street  
Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

**CLERK OF THE SUPERIOR COURT**  
**TRICIA BAKER**  
By *ESB*

ALAMEDA COUNTY  
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remedy Ayurvedic Concepts, Ltd.'s ("Ayurvedic") failure to warn users of certain products sold by the company that they are exposed to lead, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm. Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code Section 25249.5 et seq) also known as "Proposition 65," businesses with ten or more employees must provide a "clear and reasonable warning" prior to exposing persons to these chemicals.

II

PARTIES

2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility.

3. Defendant Ayurvedic is a business entity that manufactures, distributes and/or sells nutritional products that expose users of these products to lead in the State of California. These products are Himalaya Herbal Healthcare Organic Chyavanprash; Himalaya Herbal Healthcare Mind Care Jr.; and Himalaya Herbal Healthcare HeartCare. ("Covered Products"). Ayurvedic is a company that employs ten or more persons.

4. Defendants Does I-100, are named herein under fictitious names, as their true names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon alleges, that each of said Does is responsible, in some actionable manner, for the events and happenings hereinafter referred to, either through said Defendant's conduct, or through the conduct of its agents, servants or employees, or in some other manner, causing the harms alleged by ERC in this complaint. When

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1 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint  
2 to set forth the same.

III

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10 because  
7 this case is a cause not given by statute to other trial courts.

6. ERC has performed any and all conditions precedent to the filing of a legal action pursuant to

Proposition 65 by serving by mail a Notice of Violation, dated June 23, 2009 to the Attorney  
11 General of the State of California, the state's District Attorneys, the appropriate City Attorney's  
12 and to Ayurvedic. A true and correct copy of the Notice of Violation is attached herein as  
13 Exhibit A. More than 60 days have passed since this Notice of Violation was mailed and no  
14 public enforcement entity has filed a complaint in this case.

7. This Court is the proper venue for the action because the causes of action have arisen in the  
17 County of Alameda where some of the violations of law have occurred. Furthermore, this Court is  
18 the proper venue under Code of Civil Procedure Section 395.5 and Health & Safety Code Section  
19 25249.7.

IV

STATUTORY BACKGROUND

A. Proposition 65

8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as  
24 "Proposition 65" by an overwhelming majority vote of the people in November of 1986.

9. The warning requirement of Proposition 65 is contained in Health & Safety Code Section  
27 25249.6, which provides:

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

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4 10. Implementing regulations for Proposition 65 provide that warnings are required for consumer product exposures. A "consumer product exposure is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." 27 CCR Section 25601 (b).

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10 11. Whenever a clear and reasonable warning is required under Health & Safety Code Section 25249.6, the "method employed to transmit the warning must be reasonably calculated considering the alternative methods available under the circumstances, to make the warning message available prior to exposure." 27 CCR Section 25601. The warning requirement may be satisfied by a warning that appears on a product's label or other labeling, shelf labeling, signs, a system of signs, public advertising identifying the system and toll-free information services, or any other, system, that provides clear and reasonable warnings. *Id.*, Section 25603.1 (a)-(d).

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17 12. Proposition 65 establishes a procedure by which the State is to develop a list of chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code Section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after the chemical was published on the State list. *Id.*, Section 25249.10(b). Lead was listed as a chemical known to the State of California to cause developmental toxicity and male and female reproductive toxicity on February 27, 1987. Lead was listed as a chemical known to the State of California to cause cancer on October 1, 1992. Title 27, Cal. Code Regs., Section 27001.

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28 13. Proposition 65 may be enforced by any person in the public interest who provides notice sixty days before filing suit to both the violator and designated law enforcement officials. The failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed

reference.

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18. Ayurvedic refers to paragraphs 1-17, inclusive, and incorporates them herein by this

Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and Reasonable Warning under Proposition 65

FIRST CAUSE OF ACTION

cause cancer, birth defects and other reproductive harm.  
reasonable warning that they are being exposed to a chemical known to the State of California to  
17. Ayurvedic has failed to provide consumers of the Covered Products with a clear and  
exposed to lead during normal use of the product.

chemical. Ayurvedic markets the Covered Products with knowledge that consumers are being  
the Covered Products contain lead and that persons using these products are exposed to the  
providing a Proposition 65 warning. The company has at all times relevant hereto been aware that  
16. Ayurvedic has knowingly and intentionally exposed numerous persons to lead, without  
State of California. These products contain lead.

15. Defendant Ayurvedic manufactures, distributes and/or sells the Covered Products to the

STATEMENT OF FACTS

V

of up to \$2,500 per day for each violation. Id., Section 25249.7 (b).  
violation will occur." Id., Section 25249.11 (e). Furthermore, violators are subject to a civil penalty  
To "threaten to violate" means "to create a condition in which there is a substantial probability that a  
may be enjoined in any court of competent jurisdiction. Health & Safety Code Section 25249.7 (a).  
14. Proposition 65 provides that any person "violating or threatening to violate" Proposition 65  
pursuant to Health & Safety Code Section 25249.7 (c).

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19. By committing the acts alleged above, Ayurvedic has, in the course of doing business,

20. Said violations render each Defendant liable for civil penalties up to \$2,500 (two thousand, five hundred dollars) per day, for each violation.

21. Ayurvedic's continued violation of the law will irreparably harm ERC and the public interest in whose behalf Plaintiff brings this action, for which there is no adequate remedy at law.

**SECOND CAUSE OF ACTION**

**(Declaratory Relief)**

22. ERC refers to paragraphs 1-21, inclusive, and incorporates them herein by this reference.

23. There exists an actual controversy relating to the legal rights and duties of the parties, within

the meaning of Code of Civil Procedure Section 1060, between Plaintiff and Defendant concerning:

a) whether Ayurvedic has exposed individuals to a chemical known to the State of California

to cause cancer, birth defects and other reproductive harm without providing clear and reasonable

warning.

**VI**

**PRAYER**

WHEREFORE Plaintiff prays for relief as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to

proof;

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2. On the First Cause of Action, and pursuant to Health & Safety Code Section 25249.7 (a), for

such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,

prohibiting Ayurvedic from exposing persons to lead without providing clear and reasonable

warning;

3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil

Procedure Section 1060 declaring:

a. that Ayurvedic has exposed individuals to a chemical known to the State of California to

cause, birth defects and other reproductive harm without providing clear and reasonable warning;

and

4. On all Causes of Action, for reasonable attorneys' fees pursuant to Section 1021.5 of the Code

of Civil Procedure or the substantial benefit theory;

5. For costs of suit herein; and

6. For such other relief as the Court may deem just and proper.

Dated: October 18, 2010

By



Michael Freund

Attorney for Environmental Research Center

MICHAEL FREUND

ATTORNEY AT LAW

1915 ADDISON STREET

BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992

FAX 510/540-5543

EMAIL: FREUND1@AOL.COM

June 23, 2010

Re: Notice of Violation Against Ayurvedic Concepts Ltd. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by Ayurvedic Concepts Ltd.

This letter constitutes notification that Ayurvedic Concepts Ltd., located at 10440 Westoffice Dr., Houston, TX 77042 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Ayurvedic Concepts Ltd. is exposing people to lead from the following products: Himalaya Herbal Healthcare Mindcare Jr.; Himalaya Herbal Healthcare Heartcare; and Himalaya Herbal Healthcare Organic Chyavanprash.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Ayurvedic Concepts Ltd. is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1)(A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the



cc: Chris Hepinstall, ERC  
Karen Evans, Esq, ERC

Michael Freund



Sincerely,

If you have any questions, please contact my office at your earliest convenience.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Ayurvedic Concepts Ltd. unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarmed consumer exposures to lead and expensive and time-consuming litigation.

With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This Notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

**CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7 (d)**

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party Environmental Research Center ("ERC"). ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. The Notice of Violation alleges that the party identified has exposed persons in California to lead from products that it manufactures and distributes. Please refer to the Notice of Violation for additional details regarding the alleged violations.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the laboratory that conducted the testing to determine the concentration of lead in the products identified in the Notice of Violation and I have relied on the testing results. The testing was conducted by a reputable testing laboratory with substantial experience in testing for lead. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through oral exposure (ingestion).

4. Based on my consultation with the laboratory, the results of the laboratory testing, as well as published studies on lead, it is clear that there is sufficient evidence that human

as well as published studies on lead, it is clear that there is sufficient evidence that human

exposures exist from exposure to the products from the noticed party. Furthermore, as a result of

the above, I have concluded that there is a reasonable and meritorious case for the private action.

I understand that "reasonable and meritorious case for the private action" means that the

information provides a credible basis that all elements of the plaintiff's case can be established

and the information did not prove that the alleged violator will be able to establish any of the

affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it

factual information sufficient to establish the basis for this certificate, including the information

identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons

consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by

those persons.

Dated: June 23, 2010



Michael Freund

Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On June 23, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on June 23, 2010 at Berkeley, California.



Michael Freund

District Attorney of Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

District Attorney of Colusa County  
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Colusa, CA 95932

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San Diego, CA 92101

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San Francisco, CA 94102

California Attorney General's Office  
Attn: Proposition 65 Coordinator  
1515 Clay Street, Suite 2000  
PO Box 70550  
Oakland, CA 94612

Karen A. Evans, General Counsel  
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Law Office of Karen A. Evans  
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