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SAN FRANCISCO COUNTY
SUPERIOR COURT

2010 DEC 10 AM 1:06

CLERK OF THE COURT
BY: ~~EMAS BENT~~
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CASE MANAGEMENT CONFERENCE SET

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6 Environmental Research Center

MAY 13 2011 9:00AM

DEPARTMENT 212

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 ENVIRONMENTAL RESEARCH
11 CENTER, a California non-profit
12 corporation,

12 Plaintiff,

13 v.

14 PREMIER RESEARCH LABS, LP,
15 TEXAS SUPPLEMENTS, LLC,
16 QUANTUM NUTRITION LABS,
17 HEALTH PRODUCTS USA, and DOES
18 1-100, inclusive,

18 Defendants.

Case No. **SBC-10-506061**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

[Health & Safety Code §25249.5, et seq.]

20 Plaintiff Environmental Research Center brings this action in the interests of the general
21 public and, on information and belief, hereby alleges:

22 **INTRODUCTION**

23 1. This action seeks to remedy Defendants' continuing failure to warn consumers in
24 California that they are being exposed to lead, a substance known to the State of California to
25 cause cancer, birth defects and other reproductive harm. Defendants manufacture, package,
26

1 distribute, market, and/or sell in California a certain products containing lead and/or lead
2 compounds (referred to hereinafter as the "PRODUCTS").

3 2. Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are
4 substances known to the State of California¹ to cause cancer, birth defects and other reproductive
5 harm.

6 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
7 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe
8 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")
9 §25249.5, *et. seq.* (also known as "Proposition 65"). Defendants have failed to provide the
10 health hazard warnings required by Proposition 65.
11

12 4. Defendants' continued manufacturing, packaging, distributing, marketing and/or
13 sales of the PRODUCTS without the required health hazard warnings, causes individuals to be
14 involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS that violate
15 Proposition 65.

16 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued
17 manufacturing, packaging, distributing, marketing and/or selling of the PRODUCTS in
18 California without provision of clear and reasonable warnings regarding the risks of cancer, birth
19 defects and other reproductive harm posed by exposure to the LISTED CHEMICALS through
20 the use and/or handling of the PRODUCTS. Plaintiff seeks an injunctive order compelling
21 Defendants to bring their business practices into compliance with Proposition 65 by providing a
22 clear and reasonable warning to each individual who may be exposed to LISTED CHEMICALS
23 from the use and/or handling of the PRODUCTS.
24

25 _____
26 ¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 protection, worker safety and corporate responsibility.

2 11. ERC is a person within the meaning of H&S Code §25118 and brings this
3 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

4 12. Defendant PREMIER RESEARCH LABS, LP is a limited partnership and a
5 person within the meaning of H&S Code §25249.11(a). Defendant PREMIER RESEARCH
6 LABS, LP manufactures, packages, distributes, markets and/or sells the PRODUCTS for sale or
7 use in California.

8 13. Defendant TEXAS SUPPLEMENTS, LLC is a limited liability company and a
9 person within the meaning of H&S Code §25249.11(a). Defendant TEXAS SUPPLEMENTS,
10 LLC manufactures, packages, distributes, markets and/or sells the PRODUCTS for sale or use in
11 California.

12 14. Defendant QUANTUM NUTRITION LABS is an entity of unknown form and a
13 person within the meaning of H&S Code §25249.11(a). Defendant SPORTRON
14 INTERNATIONAL, INC. manufactures, packages, distributes, markets and/or sells the
15 PRODUCTS for sale or use in California.

16 15. Defendant HEALTH PRODUCTS USA is an entity of unknown form and a
17 person within the meaning of H&S Code §25249.11(a). Defendant SPORTRON
18 INTERNATIONAL, INC. manufactures, packages, distributes, markets and/or sells the
19 PRODUCTS for sale or use in California.

20 16. Defendants Does 1-100 are named herein under fictitious names, as their true
21 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
22 alleges, that each of said Does manufactures, packages, distributes, markets and/or sells the
23 PRODUCTS for sale or use in California, and/or is responsible, in some actionable manner, for
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1 the events and happenings referred to herein, either through its conduct or through the conduct of
2 its agents, servants or employees, or in some other manner, causing the harms alleged herein.
3 Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of
4 Does when ascertained.

5 STATUTORY BACKGROUND

6 17. The People of the State of California have declared in Proposition 65 their right
7 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
8 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

9
10 18. To effect this goal, Proposition 65 requires that individuals be provided with a
11 “clear and reasonable warning” before being exposed to substances listed by the State of
12 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
13 part:

14 No person in the course of doing business shall knowingly and intentionally
15 expose any individual to a chemical known to the state to cause cancer or
16 reproductive toxicity without first giving clear and reasonable warning to
such individual....

17 19. Proposition 65 provides that any person “violating or threatening to violate” the
18 statute may be enjoined in any court of competent jurisdiction. (H&S Code §25249.7(a).) The
19 phrase “threatening to violate” is defined to mean creating “a condition in which there is a
20 substantial probability that a violation will occur.” (H&S Code §25249.11(e).) Violators are
21 liable for civil penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S
22 Code §25249.7(b).)

23 FACTUAL BACKGROUND

24
25 20. On February 27, 1987, the State of California officially listed the chemical lead as
26 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the

1 warning requirement one year later and was therefore subject to the “clear and reasonable”
2 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
3 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

4 21. On October 1, 1992, the State of California officially listed the chemicals lead and
5 lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject
6 to the warning requirement one year later and were therefore subject to the “clear and
7 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR
8 §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

9 22. Plaintiff is informed and believes, and based on such information and belief,
10 alleges the PRODUCTS have been marketed, distributed, and/or sold to individuals in California
11 without clear and reasonable warning before, on, and after September 13, 2010. The
12 PRODUCTS continue to be marketed, distributed, and/or sold in California without the requisite
13 warning information.

14 23. As a proximate result of acts by Defendants, as persons in the course of doing
15 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
16 California, including in the County of San Francisco, have been exposed to the LISTED
17 CHEMICALS without clear and reasonable warning. The individuals subject to exposures to the
18 LISTED CHEMICALS include normal and foreseeable users of the PRODUCTS, as well as all
19 other persons exposed to the PRODUCTS.

20 24. At all times relevant to this action, Defendants have knowingly and intentionally
21 exposed the users and/or handlers of the PRODUCTS to the LISTED CHEMICALS without first
22 giving a clear and reasonable warning to such individuals.

23 25. Individuals using and/or handling the PRODUCTS are exposed to the LISTED
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1 CHEMICALS in excess of the “maximum allowable daily” and “no significant risk” levels
2 determined by the State of California, as applicable.

3 26. At all times relevant to this action, Defendants have, in the course of doing
4 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and
5 reasonable warning that the PRODUCTS expose individuals to the LISTED CHEMICALS.

6 27. The PRODUCTS continue to be marketed, distributed, and/or sold in California
7 without the requisite clear and reasonable warning.

8 **FIRST CAUSE OF ACTION**

9
10 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.* concerning the
11 PRODUCTS described in Plaintiff’s September 13, 2010 60-Day Notice of Violations)**

12 28. Plaintiff realleges and incorporates by reference Paragraphs 1 through 27,
13 inclusive, as if specifically set forth herein.

14 29. On September 13, 2010, Plaintiff sent a 60-Day Notice of Proposition 65
15 violations to the requisite public enforcement agencies and to Defendants PREMIER
16 RESEARCH LABS, LP, TEXAS SUPPLEMENTS, LLC, QUANTUM NUTRITION LABS,
17 and HEALTH PRODUCTS USA (“First Notice”). The First Notice was issued pursuant to, and
18 in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing
19 regulations regarding the notice of the violations to be given to certain public enforcement
20 agencies and to the violator. The notice was issued as follows:

- 21 a. Defendants PREMIER RESEARCH LABS, LP, TEXAS
22 SUPPLEMENTS, LLC, QUANTUM NUTRITION LABS and HEALTH
23 PRODUCTS USA, and the California Attorney General were provided
24 copies of the First Notice by Certified Mail.

- 25 b. Defendants PREMIER RESEARCH LABS, LP, TEXAS
26

1 SUPPLEMENTS, LLC, QUANTUM NUTRITION LABS, and HEALTH
2 PRODUCTS USA were provided a copy of a document entitled "The
3 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition
4 65): A Summary," which is also known as Appendix A to Title 27 of CCR
5 §25903.

6 c. The California Attorney General was provided with a Certificate of
7 Merit by the noticing party or the attorney for the noticing party,
8 stating that there is a reasonable and meritorious cause for this action,
9 and attaching factual information sufficient to establish a basis for
10 the certificate, including the identity of the persons consulted with and
11 relied on by the certifier, and the facts, studies, or other data reviewed
12 by those persons, pursuant to H&S Code §25249.7(h)(2).

13
14 30. The appropriate public enforcement agencies have failed to commence and
15 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants
16 based on the allegations herein.

17
18 31. By committing the acts alleged in this Complaint, Defendants at all times relevant
19 to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the
20 course of doing business, knowingly and intentionally exposing individuals who use and/or
21 handle the PRODUCTS set forth in the First Notice to the LISTED CHEMICALS, without first
22 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6
23 and 25249.11(f).

24 32. By the above-described acts, Defendants have violated H&S Code §25249.6 and
25 are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, and to
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1 provide required warnings to consumers and other individuals who will purchase, use and/or
2 handle the PRODUCTS.

3 33. An action for injunctive relief under Proposition 65 is specifically authorized by
4 Health & Safety Code §25249.7(a).

5 34. Continuing commission by Defendants of the acts alleged above will irreparably
6 harm the citizens of the State of California, for which harm they have no plain, speedy, or
7 adequate remedy at law.

8 Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

9
10 **SECOND CAUSE OF ACTION**

11 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning the**
12 **PRODUCTS described in Plaintiff's September 13, 2010 60-Day Notice of Violations)**

13 35. Plaintiff realleges and incorporates by reference Paragraphs 1 through 34,
14 inclusive, as if specifically set forth herein.

15 36. On September 13, 2010, Plaintiff sent a 60-Day Notice of Proposition 65
16 violations to the requisite public enforcement agencies and to Defendants PREMIER
17 RESEARCH LABS, LP, TEXAS SUPPLEMENTS, LLC, QUANTUM NUTRITION LABS,
18 and HEALTH PRODUCTS USA ("First Notice"). The First Notice was issued pursuant to, and
19 in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing
20 regulations regarding the notice of the violations to be given to certain public enforcement
21 agencies and to the violator. The notice was issued as follows:

- 22 a. Defendants PREMIER RESEARCH LABS, LP, TEXAS
23 SUPPLEMENTS, LLC, QUANTUM NUTRITION LABS and HEALTH
24 PRODUCTS USA, and the California Attorney General were provided
25 copies of the First Notice by Certified Mail.
26

1 b. Defendants PREMIER RESEARCH LABS, LP, TEXAS
2 SUPPLEMENTS, LLC, QUANTUM NUTRITION LABS, and HEALTH
3 PRODUCTS USA were provided a copy of a document entitled "The Safe
4 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
5 Summary," which is also known as Appendix A to Title 27 of CCR
6 §25903.

7 c. The California Attorney General was provided with a Certificate of
8 Merit by the noticing party or the attorney for the noticing party,
9 stating that there is a reasonable and meritorious cause for this action,
10 and attaching factual information sufficient to establish a basis for
11 the certificate, including the identity of the persons consulted with and
12 relied on by the certifier, and the facts, studies, or other data reviewed
13 by those persons, pursuant to H&S Code §25249.7(h)(2).
14

15 37. The appropriate public enforcement agencies have failed to commence and
16 diligently prosecute a cause of action under H&S Code §2524935, *et seq.* against Defendants
17 based on the allegations herein.
18

19 38. By committing the acts alleged in the Complaint, Defendants at all times relevant
20 to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the
21 course of doing business, knowingly and intentionally exposing individuals who use and/or
22 handle the PRODUCTS set forth in the First Notice to the LISTED CHEMICALS, without first
23 providing a clear and reasonable warning to such individuals pursuant to H&S Code §25249.6
24 and 25249.11(f).
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26 39. By the above-described acts, Defendants are liable, pursuant to H&S Code

1 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to a
2 LISTED CHEMICAL from the PRODUCTS.

3 Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

4 **THE NEED FOR INJUNCTIVE RELIEF**

5 40. Plaintiff realleges and incorporates by this reference Paragraphs 1 through 39, as
6 if set forth below.

7 41. By committing the acts alleged in this Complaint, Defendants have caused
8 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
9 of equitable relief, Defendants will continue to create a substantial risk of irreparable injury by
10 continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
11 CHEMICALS through the use and/or handling of the PRODUCTS.
12

13 **PRAAYER FOR RELIEF**

14 Wherefore, Plaintiff prays for the following relief:

15 A. A preliminary and permanent injunction enjoining Defendants, their agents,
16 employees, assigns and all persons acting in concert or participating with Defendants, from
17 manufacturing, packaging, distributing, marketing and/or selling the PRODUCTS for sale and/or
18 use in California without first providing a clear and reasonable warning, within the meaning of
19 Proposition 65, that the users and/or handlers of the PRODUCTS are exposed to the LISTED
20 CHEMICALS.
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22 B. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
23 against Defendants in the amount of \$2,500 per day for each violation of Proposition 65;

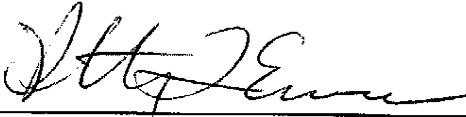
24 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code
25 of Civil Procedure §1021.5 or the substantial benefit theory;
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1 D. An award of costs of suit herein; and

2 E. Such other and further relief as may be just and proper.

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4 Dated: December 10, 2010

LAW OFFICE OF PHILIP T. EMMONS

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6 By: 

7 Philip T. Emmons, Esq.
8 Attorney for Plaintiff
9 Environmental Research Center
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