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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF SAN FRANCISCO

8 ENVIRONMENTAL RESEARCH
9 CENTER, a California non-profit
10 corporation,

11 Plaintiff,

12 v.

13 NATURE'S BEST, INC., THE ISOPURE
14 COMPANY, LLC, and DOES 1-50,
inclusive,

15 Defendants.
16

Case No. **CGC-11-513929**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

17
18 Plaintiff Environmental Research Center brings this action in the interests of the general
19 public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendants' continuing failure to warn consumers in
22 California that they are being exposed to lead, a substance known to the State of California¹ to
23 cause cancer, birth defects and other reproductive harm.

24 2. Defendants have manufactured, packaged, distributed, marketed, and/or sold, and
25 continue to manufacture, package, distribute, market and/or sell, the following ingestible
26 products, which contain the chemical lead and which have been and continue to be offered for
27 sale, sold and/or otherwise provided for use and/or handling to individuals in California:

28 a. Nature's Best Isopure Apple Melon.

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

- b. Nature's Best Isopure Pineapple Orange Banana.
- c. Nature's Best Isopure Mango Peach.
- d. Nature's Best Isopure Grape Frost.
- e. Nature's Best Isopure Blue Raspberry.
- f. Nature's Best – Perfect Natural Isopure – Natural Chocolate.
- g. Nature's Best Inc. Perfect Isopure Low Carb Meal Replacement Shake
Dutch Chocolate

These listed products are hereinafter referred to together as "THE PRODUCTS".

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

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

5. Plaintiff seeks injunctive relief enjoining Defendants from the continued manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or use in California without first providing clear and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by exposure to lead through the use and/or handling of THE PRODUCTS. Plaintiff seeks an injunctive order compelling Defendants to bring their business practices into compliance with Proposition 65 by providing clear and reasonable warnings to each individual who may be exposed to lead from the use and/or handling of THE PRODUCTS.

6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to remedy Defendants' failure to provide clear and reasonable warnings regarding exposures to the lead.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except

1 those given by statute to other trial courts.” The statute under which this action is brought does
2 not specify any other basis for jurisdiction.

3 8. This Court has jurisdiction over Defendants because, based on information and
4 belief, Defendants are businesses having sufficient minimum contacts with California, or
5 otherwise intentionally availing themselves of the California market through the marketing,
6 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of
7 jurisdiction over them by the California courts consistent with traditional notions of fair play and
8 substantial justice.

9 9. This Court is the proper venue for this action because the Defendants have
10 violated California law in the County of San Francisco. Furthermore, this Court is the proper
11 venue under Code of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that
12 any person who violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be
13 enjoined in any court of competent jurisdiction.

13 PARTIES

14 10. Plaintiff Environmental Research Center (“ERC”) is a non-profit corporation
15 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among
16 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
17 protection, worker safety and corporate responsibility.

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

20 12. Defendant NATURE’S BEST, INC. is a corporation and Defendant THE
21 ISOPURE COMPANY, LLC is a limited liability company, thus each being a person within the
22 meaning of H&S Code §25249.11(a). Defendants NATURE’S BEST, INC. and THE
23 ISOPURE COMPANY, LLC have manufactured, packaged, distributed, marketed and/or sold,
24 and continue to manufacture, package, distribute, market and/or sell, THE PRODUCTS for sale
25 or use in California.

26 13. Defendants Does 1-50 are named herein under fictitious names, as their true
27 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
28 alleges, that each of said Does has manufactured, packaged, distributed, marketed and/or sold,
and continues to manufacture, package, distribute, market and/or sell THE PRODUCTS for sale
or use in California, and/or is responsible, in some actionable manner, for the events and

1 happenings referred to herein, either through its conduct or through the conduct of its agents,
2 servants or employees, or in some other manner, causing the harms alleged herein. Plaintiff will
3 seek leave to amend this Complaint to set forth the true names and capacities of Does when
4 ascertained.

5 STATUTORY BACKGROUND

6 14. 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 15. To effect this goal, Proposition 65 requires that individuals be provided with a
10 “clear and reasonable warning” before being exposed to substances listed by the State of
11 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
12 part:

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

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

22 FACTUAL BACKGROUND

23 17. On February 27, 1987, the State of California officially listed the chemical lead as
24 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the
25 warning requirement one year later and was therefore subject to the “clear and reasonable”
26 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
27 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

28 18. On October 1, 1992, the State of California officially listed the chemical lead as a
chemical known to cause cancer. Lead became subject to the warning requirement one year later
and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65
beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

1 violations to the requisite public enforcement agencies and to Defendants NATURE'S BEST,
2 INC. and THE ISOPURE COMPANY, LLC (these three notices are hereinafter referred to
3 together as "Notices of Violations"). THE PRODUCTS were identified in the Notices of
4 Violations as containing lead exceeding allowable levels. The Notices of Violations were issued
5 pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the
6 statute's implementing regulations regarding the notice of violations to be given to certain public
7 enforcement agencies and to the violator. The Notices of Violations were issued as follows:

- 8 a. Defendant NATURE'S BEST, INC. and the California Attorney
9 General were provided copies by Certified Mail of the September 4, 2010
10 Notice of Violations; and Defendants NATURE'S BEST, INC. and THE
11 ISOPURE COMPANY, LLC and the California Attorney General were
12 provided copies by Certified Mail of the September 24, 2010 and
13 November 5, 2010 Notices of Violations. The requisite county district
14 attorneys and city attorneys were provided copies by First Class Mail of
15 the Notices of Violations. The Notices of Violations were accompanied
16 by Certificates of Merit by the attorney for the noticing party stating that
17 there is a reasonable and meritorious cause for this action.
- 18 b. Defendants NATURE'S BEST, INC. and THE ISOPURE COMPANY,
19 LLC were provided, with each of their respective Notices of Violations, a
20 copy of a document entitled "The Safe Drinking Water and Toxic
21 Enforcement Act of 1986 (Proposition 65): A Summary," which is also
22 known as Appendix A to Title 27 of CCR §25903.
- 23 c. The California Attorney General was provided, with each of the Notices of
24 Violations, additional factual information sufficient to establish a basis for
25 the Certificate of Merit, including the identity of the persons consulted
26 with and relied on by the certifier, and the facts, studies, or other data
27 reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and
28 25249.7(h)(2).

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

1 to the requisite public enforcement agencies and to Defendant NATURE'S BEST, INC.; and on
2 September 24, 2010 and November 5, 2010, Plaintiff sent 60-Day Notices of Proposition 65
3 violations to the requisite public enforcement agencies and to Defendants NATURE'S BEST,
4 INC. and THE ISOPURE COMPANY, LLC (these three notices are hereinafter referred to
5 together as "Notices of Violations"). THE PRODUCTS were identified in the Notices of
6 Violations as containing lead exceeding allowable levels. The Notices of Violations were issued
7 pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the
8 statute's implementing regulations regarding the notice of violations to be given to certain public
9 enforcement agencies and to the violator. The Notices of Violations were issued as follows:

- 10 a. Defendant NATURE'S BEST, INC. and the California Attorney
11 General were provided copies by Certified Mail of the September 4, 2010
12 Notice of Violations; and Defendants NATURE'S BEST, INC. and THE
13 ISOPURE COMPANY, LLC and the California Attorney General were
14 provided copies by Certified Mail of the September 24, 2010 and
15 November 5, 2010 Notices of Violations. The requisite county district
16 attorneys and city attorneys were provided copies by First Class Mail of
17 the Notices of Violations. The Notices of Violations were accompanied
18 by Certificates of Merit by the attorney for the noticing party stating that
19 there is a reasonable and meritorious cause for this action.
- 20 b. Defendants NATURE'S BEST, INC. and THE ISOPURE COMPANY,
21 LLC were provided, with each of their respective Notices of Violations, a
22 copy of a document entitled "The Safe Drinking Water and Toxic
23 Enforcement Act of 1986 (Proposition 65): A Summary," which is also
24 known as Appendix A to Title 27 of CCR §25903.
- 25 c. The California Attorney General was provided, with each of the Notices of
26 Violations, additional factual information sufficient to establish a basis for
27 the Certificate of Merit, including the identity of the persons consulted
28 with and relied on by the certifier, and the facts, studies, or other data
reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and
25249.7(h)(2).

34. The appropriate public enforcement agencies have failed to commence and

1 diligently prosecute a cause of action under H&S Code §2524935, *et seq.* against Defendants
2 based on the allegations herein.

3 35. By committing the acts alleged in this Complaint, Defendants at all times relevant
4 to this action, and continuing through the present, have violated and continue to violate H&S
5 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
6 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
7 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
8 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
9 packaged, distributed, marketed and/or sold THE PRODUCTS, and continue to manufacture,
10 package, distribute, market and/or sell THE PRODUCTS, which have been, are, and will be used
11 and/or handled by individuals in California, without Defendants providing clear and reasonable
12 warnings, within the meaning of Proposition 65, regarding the risks of cancer, birth defects and
13 other reproductive harm posed by exposure to lead through the use and/or handling of THE
14 PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code §25249.6 by THE
15 PRODUCTS being marketed, offered for sale, sold or otherwise provided for use and/or
16 handling to individuals in California.

16 36. By the above-described acts, Defendants are liable, pursuant to H&S Code
17 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
18 relating to THE PRODUCTS.

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

20 **THE NEED FOR INJUNCTIVE RELIEF**

21 37. Plaintiff realleges and incorporates by this reference Paragraphs 1 through 36,
22 inclusive, as if specifically set forth herein.

23 38. By committing the acts alleged in this Complaint, Defendants have caused
24 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
25 of equitable relief, Defendants will continue to create a substantial risk of irreparable injury by
26 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the
27 use and/or handling of THE PRODUCTS.

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