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ENDORSED
FILED
San Francisco County Superior Court
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BY: DENNIS TOYAMA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

ENVIRONMENTAL RESEARCH CENTER, a California non-profit corporation, Plaintiff, v. QUICK TRIM, LLC, and DOES 1-100, inclusive, Defendants.	Case No. CGC-11-513672 **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES** **[Health & Safety Code §25249.5, *et seq.*]**

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

INTRODUCTION

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

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

a. Quick Trim Fast-Shake Chocolate.

b. Quick Trim, LLC ISO Burn AM 14 Day Diet System 3 Part System.

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

c. Quick Trim, LLC ISO Cleanse PM 3 Part System.

d. Quick Trim, LLC ISO Flush 3 Part System.

e. Quick Trim Extreme Burn.

f. Quick Trim, LLC ISO Cleanse PM 14 Day Diet System.

g. Quick Trim, LLC ISO Burn AM.

h. Quick Trim, LLC Hotstix-Berry Flavor.

The products in this list 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 those given by statute to other trial courts." The statute under which this action is brought does

not specify any other basis for jurisdiction.

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

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

PARTIES

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

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

12. Defendant QUICK TRIM, LLC is a limited liability company and a person within the meaning of H&S Code §25249.11(a). Defendant QUICK TRIM, LLC 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.

13. Defendants Does 1-100 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 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 happenings referred to herein, either through its conduct or through the conduct of its agents, servants or employees, or in some other manner, causing the harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of Does when

ascertained.

STATUTORY BACKGROUND

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

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

> 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....

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

FACTUAL BACKGROUND

17. On February 27, 1987, the State of California officially listed the chemical lead as a chemical known to cause developmental and reproductive toxicity. 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 February 27, 1988. (27 California Code of Regulations ("CCR") §25000, *et seq.;* H&S Code §25249.5, *et seq.*)

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.*)

19. Plaintiff is informed and believes, and based on such information and belief, alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in California without the requisite clear and reasonable warnings before, on, and after September 24, 2010. THE PRODUCTS continue to be marketed, distributed and sold in California without the requisite warning information.

20. As a proximate result of acts by Defendants, as persons in the course of doing business within the meaning of H&S Code §25249.11(b), individuals throughout the State of California, including in the County of San Francisco, have been exposed to lead without clear and reasonable warnings. The individuals subject to exposures to lead include normal and foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE PRODUCTS.

21. At all times relevant to this action, Defendants have knowingly and intentionally exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and reasonable warnings to such individuals.

22. Individuals using or handling THE PRODUCTS are exposed to lead in excess of the "maximum allowable daily" and "no significant risk" levels determined by the State of California, as applicable.

23. At all times relevant to this action, Defendants have, in the course of doing business, failed to provide individuals using and/or handling THE PRODUCTS with clear and reasonable warnings that THE PRODUCTS expose individuals to lead.

24. THE PRODUCTS continue to be marketed, distributed, and/or sold in California without the requisite clear and reasonable warnings.

FIRST CAUSE OF ACTION

(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.* concerning THE PRODUCTS, which are identified in Plaintiff's September 24, 2010 60-Day Notice of Violations)

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

26. On September 24, 2010, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendant QUICK TRIM, LLC ("Notice of Violations"). THE PRODUCTS were identified in the Notice of Violations as

containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of violations to be given to certain public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

a. Defendant QUICK TRIM, LLC and the California Attorney General were provided copies by Certified Mail of the Notice of Violations, along with a Certificate of a Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies by First Class Mail of the Notice of Violations and Certificate of Merit.

b. Defendant QUICK TRIM, LLC was provided, with the Notice of Violations, a copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of CCR §25903.

c. The California Attorney General was provided, with the Notice of Violations, additional factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted 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).

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

28. By committing the acts alleged in this Complaint, Defendants at all times relevant to this action, and continuing through the present, have violated and continue to violate H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding allowable exposure levels without Defendants first giving clear and reasonable warnings to such individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured, packaged, distributed, marketed and/or sold THE PRODUCTS, and continue to manufacture,

package, distribute, market and/or sell THE PRODUCTS, which have been, are, and will be used and/or handled by individuals in California, without Defendants 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. Furthermore, Defendants have threatened to violate H&S Code §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided for use and/or handling to individuals in California.

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

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

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

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

SECOND CAUSE OF ACTION

(Civil Penalties for Violations of Health and Safety Code §25249.5, *et seq.* concerning THE PRODUCTS, which are identified in Plaintiff's September 24, 2010 60-Day Notice of Violations)

32. Plaintiff realleges and incorporates by reference Paragraphs 1 through 31, inclusive, as if specifically set forth herein.

33. On September 24, 2010, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendant QUICK TRIM, LLC ("Notice of Violations"). THE PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to be given to certain public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

a. Defendant QUICK TRIM, LLC and the California Attorney General were provided copies by Certified Mail of the Notice of Violations, along with a Certificate of a Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies by First Class Mail of the Notice of Violations and Certificate of Merit.

b. Defendant QUICK TRIM, LLC was provided, with the Notice of Violations, a copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of CCR §25903.

c. The California Attorney General was provided, with the Notice of Violations, additional factual information sufficient to establish a basis for the certificate, including the identity of the persons consulted 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 diligently prosecute a cause of action under H&S Code §2524935, *et seq.* against Defendants based on the allegations herein.

35. By committing the acts alleged in this Complaint, Defendants at all times relevant to this action, and continuing through the present, have violated and continue to violate H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding allowable exposure levels without Defendants first giving clear and reasonable warnings to such individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured, packaged, distributed, marketed and/or sold THE PRODUCTS, and continue to manufacture, package, distribute, market and/or sell THE PRODUCTS, which have been, are, and will be used and/or handled by individuals in California, without Defendants 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. Furthermore, Defendants have threatened to violate H&S Code §25249.6 by THE PRODUCTS being marketed, offered for sale, sold or otherwise provided for use and/or handling to individuals in California.

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

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

THE NEED FOR INJUNCTIVE RELIEF

37. Plaintiff realleges and incorporates by this reference Paragraphs 1 through 36, as if set forth below.

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

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

A. A preliminary and permanent injunction enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or use in California without first providing clear and reasonable warnings, within the meaning of Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead.

B. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b), against Defendants in the amount of $2,500 per day for each violation of Proposition 65;

C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code of Civil Procedure §1021.5 or the substantial benefit theory;

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D. An award of costs of suit herein; and

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

Dated: August 25, 2011

LAW OFFICE OF PHILIP T. EMMONS

By:

Philip T. Emmons
Attorney for Plaintiff
Environmental Research Center