

1 Philip T. Emmons (SBN 124902)
2 Law Office of Philip T. Emmons
208 Normandy Lane
3 Walnut Creek, CA 94598
T: (925) 349-4029

4 Attorney for Plaintiff
5 Environmental Research Center

ENDORSED
FILED
Superior Court of California
County of San Francisco
NOV 01 2011
CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

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

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

10
11 Plaintiff,

12 v.

13 ALOE VERA OF AMERICA, INC.;
14 FOREVER LIVING PRODUCTS
INTERNATIONAL, INC.; FOREVER
15 LIVING PRODUCTS U.S., INC.;
16 FOREVER LIVING.COM, L.L.C.;
17 FOREVER LIVING PRODUCTS, L.L.C.;
and DOES 1-50, inclusive,

18 Defendants.

Case No.

CGC - 11 - 515588

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

19
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 California¹ to
25 cause cancer, birth defects and other reproductive harm.

26 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have
27 otherwise been involved in the chain of commerce of, and continue to manufacture, package,

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

1 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the
2 following ingestible products, which contain the chemical lead and which have been and
3 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to
4 individuals in California:

- 5 a. Forever Living Freedom2Go Pomegranate Flavored Aloe Vera Juice.
- 6 b. Forever Living Products Aloe Vera of America – Forever Pomesteen
7 Power.
- 8 c. Forever Living Gin-Chai.
- 9 d. Forever Living Forever Lite Ultra Chocolate Shake Mix.

9 These listed products are hereinafter referred to together as “THE PRODUCTS”.

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

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

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

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

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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. Defendants ALOE VERA OF AMERICA, INC., FOREVER LIVING PRODUCTS INTERNATIONAL, INC., and FOREVER LIVING PRODUCTS U.S., INC. are corporations, and Defendants FOREVER LIVING.COM, L.L.C. and FOREVER LIVING PRODUCTS, L.L.C. are limited liability companies, thus each being a person within the meaning of H&S Code §25249.11(a). Defendants have manufactured, packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of commerce, and continue to manufacture, package, distribute, market, sell and/or otherwise continue to be involved in the

1 chain of commerce of THE PRODUCTS for sale or use in California.

2 13. Defendants Does 1-50 are named herein under fictitious names, as their true
3 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
4 alleges, that each of said Does has manufactured, packaged, distributed, marketed, sold and/or
5 has otherwise been involved in the chain of commerce of, and continues to manufacture,
6 package, distribute, market, sell and/or otherwise continues to be involved in the chain of
7 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
8 actionable manner, for the events and happenings referred to herein, either through its conduct or
9 through the conduct of its agents, servants or employees, or in some other manner, causing the
10 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
11 names and capacities of Does when ascertained.

12 STATUTORY BACKGROUND

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

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

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

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

29 FACTUAL BACKGROUND

30 17. On February 27, 1987, the State of California officially listed the chemical lead as
31 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 18. On October 1, 1992, the State of California officially listed the chemical lead as a
5 chemical known to cause cancer. Lead became subject to the warning requirement one year later
6 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65
7 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

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

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

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

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

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

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

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1 **FIRST CAUSE OF ACTION**

2 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, et seq. concerning**
3 **THE PRODUCTS, which are identified in Plaintiff's September 4, 2010 and January 14,**
4 **2011 60-Day Notices of Violations)**

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

7 26. On September 4, 2010 and January 14, 2011, Plaintiff sent 60-Day Notices of
8 Proposition 65 violations to the requisite public enforcement agencies and to Defendants ALOE
9 VERA OF AMERICA, INC., FOREVER LIVING PRODUCTS INTERNATIONAL, INC.,
10 FOREVER LIVING PRODUCTS U.S., INC., FOREVER LIVING.COM, L.L.C. and
11 FOREVER LIVING PRODUCTS, L.L.C. ("Notices of Violations"). THE PRODUCTS were
12 identified in the Notices of Violations as containing lead exceeding allowable levels. The
13 Notices of Violations were issued pursuant to, and in compliance with, the requirements of H&S
14 Code §25249.7(d) and the statute's implementing regulations regarding the notice of violations
15 to be given to certain public enforcement agencies and to the violator. The Notices of Violations
16 were issued as follows:

- 17 a. The California Attorney General and Defendants ALOE VERA OF
18 AMERICA, INC., FOREVER LIVING PRODUCTS INTERNATIONAL,
19 INC., FOREVER LIVING PRODUCTS U.S., INC., FOREVER
20 LIVING.COM, L.L.C. and FOREVER LIVING PRODUCTS, L.L.C.
21 were provided copies by Certified Mail of the Notices of Violations, along
22 with Certificates of Merit by the attorney for the noticing party stating that
23 there is a reasonable and meritorious cause for this action. The requisite
24 county district attorneys and city attorneys were provided copies by First
25 Class Mail of the Notices of Violations and Certificates of Merit.
- 26 b. Defendants ALOE VERA OF AMERICA, INC., FOREVER LIVING
27 PRODUCTS INTERNATIONAL, INC., FOREVER LIVING
28 PRODUCTS U.S., INC., FOREVER LIVING.COM, L.L.C. and
FOREVER LIVING PRODUCTS, L.L.C. were provided, with each of
their respective Notices of Violations, a copy of a document entitled "The
Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition

1 65): A Summary,” which is also known as Appendix A to Title 27 of CCR
2 §25903.

3 c. The California Attorney General was provided, with each of the Notices of
4 Violations, additional factual information sufficient to establish a
5 basis for the Certificate of Merit, including the identity of the persons
6 consulted with and relied on by the certifier, and the facts, studies, or other
7 data reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1)
8 and 25249.7(h)(2).

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

12 28. By committing the acts alleged in this Complaint, Defendants at all times relevant
13 to this action, and continuing through the present, have violated and continue to violate H&S
14 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
15 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
16 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
17 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
18 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of
19 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
20 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
21 and will be used and/or handled by individuals in California, without Defendants providing clear
22 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
23 birth defects and other reproductive harm posed by exposure to lead through the use and/or
24 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
25 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
26 for use and/or handling to individuals in California.

27 29. By the above-described acts, Defendants have violated H&S Code §25249.6 and
28 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

1 Health & Safety Code §25249.7(a).

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

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

6 **SECOND CAUSE OF ACTION**

7 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning THE**
8 **PRODUCTS, which are identified in Plaintiff's September 4, 2010 and January 14, 2011**
9 **60-Day Notices of Violations)**

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

11 33. On September 4, 2010 and January 14, 2011, Plaintiff sent 60-Day Notices of
12 Proposition 65 violations to the requisite public enforcement agencies and to Defendants ALOE
13 VERA OF AMERICA, INC., FOREVER LIVING PRODUCTS INTERNATIONAL, INC.,
14 FOREVER LIVING PRODUCTS U.S., INC., FOREVER LIVING.COM, L.L.C. and
15 FOREVER LIVING PRODUCTS, L.L.C. ("Notices of Violations"). THE PRODUCTS were
16 identified in the Notices of Violations as containing lead exceeding allowable levels. The
17 Notices of Violations were issued pursuant to, and in compliance with, the requirements of H&S
18 Code §25249.7(d) and the statute's implementing regulations regarding the notice of violations
19 to be given to certain public enforcement agencies and to the violator. The Notices of Violations
20 were issued as follows:

- 20 a. The California Attorney General and Defendants ALOE VERA OF
21 AMERICA, INC., FOREVER LIVING PRODUCTS INTERNATIONAL,
22 INC., FOREVER LIVING PRODUCTS U.S., INC., FOREVER
23 LIVING.COM, L.L.C. and FOREVER LIVING PRODUCTS, L.L.C.
24 were provided copies by Certified Mail of the Notices of Violations, along
25 with Certificates of Merit by the attorney for the noticing party stating that
26 there is a reasonable and meritorious cause for this action. The requisite
27 county district attorneys and city attorneys were provided copies by First
28 Class Mail of the Notices of Violations and Certificates of Merit.
- b. Defendants ALOE VERA OF AMERICA, INC., FOREVER LIVING

1 PRODUCTS INTERNATIONAL, INC., FOREVER LIVING
2 PRODUCTS U.S., INC., FOREVER LIVING.COM, L.L.C. and
3 FOREVER LIVING PRODUCTS, L.L.C. were provided, with each of
4 their respective Notices of Violations, a copy of a document entitled "The
5 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition
6 65): A Summary," which is also known as Appendix A to Title 27 of CCR
7 §25903.

8 c. The California Attorney General was provided, with each of the Notices of
9 Violations, additional factual information sufficient to establish a
10 basis for the Certificate of Merit, including the identity of the persons
11 consulted with and relied on by the certifier, and the facts, studies, or other
12 data reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1)
and 25249.7(h)(2).

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

16 35. By committing the acts alleged in this Complaint, Defendants at all times relevant
17 to this action, and continuing through the present, have violated and continue to violate H&S
18 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
19 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
20 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
21 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
22 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of
23 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
24 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
25 and will be used and/or handled by individuals in California, without Defendants providing clear
26 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
27 birth defects and other reproductive harm posed by exposure to lead through the use and/or
28 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.

