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SAN FRANCISCO COUNTY
SUPERIOR COURT

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

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

13 Plaintiff,

14 v.

15 HEALTHY BODY SERVICES INC.;
16 HEALTHY BODY SERVICES, LLC; and
17 DOES 1-50, inclusive,

18 Defendants.

Case No. **CGC-11-514620**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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

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, sold and/or have
25 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
26 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the
27 following ingestible products, which contain the chemical lead and which have been and
28 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to

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

1 individuals in California:

- 2 a. Healthy Body Services Inc., Allmax Nutrition –TestoFX Hardcore.
- 3 b. Healthy Body Services Inc., Allmax Nutrition –Rapidcuts Hardcore.
- 4 c. Healthy Body Services Inc., Allmax Nutrition –Rapidcuts Hardcore
5 Detonation Packs.
- 6 d. Healthy Body Services Inc., Allmax Nutrition –Vitastack.
- 7 c. HBS International Corp. Allmax Nutrition TribX90 Ultra Concentrated
8 Bulgarian Species.

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.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to California Constitution

1 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
2 those given by statute to other trial courts.” The statute under which this action is brought does
3 not specify any other basis for jurisdiction.

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

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

14 PARTIES

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

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

21 12. Defendant HEALTHY BODY SERVICES INC. is a corporation and Defendant
22 HEALTHY BODY SERVICES, LLC is a limited liability company, thus each being a person
23 within the meaning of H&S Code §25249.11(a). Defendants HEALTHY BODY SERVICES
24 INC. and HEALTHY BODY SERVICES, LLC have manufactured, packaged, distributed,
25 marketed, sold and/or have otherwise been involved in the chain of commerce, and continue to
26 manufacture, package, distribute, market, sell and/or otherwise continue to be involved in the
27 chain of commerce of THE PRODUCTS for sale or use in California.

28 13. Defendants Does 1-50 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, sold and/or

1 has otherwise been involved in the chain of commerce of, and continues to manufacture,
2 package, distribute, market, sell and/or otherwise continues to be involved in the chain of
3 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
4 actionable manner, for the events and happenings referred to herein, either through its conduct or
5 through the conduct of its agents, servants or employees, or in some other manner, causing the
6 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
7 names and capacities of Does when ascertained.

8 STATUTORY BACKGROUND

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

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

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

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

25 FACTUAL BACKGROUND

26 17. On February 27, 1987, the State of California officially listed the chemical lead as
27 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the
28 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

1 chemical known to cause cancer. Lead became subject to the warning requirement one year later
2 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65
3 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

4 19. Plaintiff is informed and believes, and based on such information and belief,
5 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
6 California without the requisite clear and reasonable warnings before, on, and after October 22,
7 2010. THE PRODUCTS continue to be marketed, distributed and sold in California without the
8 requisite warning information.

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

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

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

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

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

26 **FIRST CAUSE OF ACTION**

27 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.* concerning**
28 **THE PRODUCTS, which are identified in Plaintiff’s October 22, 2010 and January 14,**
2011 60-Day Notices of Violations)

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

1 26. On October 22, 2010 and January 14, 2011, Plaintiff sent 60-Day Notices of
2 Proposition 65 violations to the requisite public enforcement agencies and to Defendants
3 HEALTHY BODY SERVICES INC. and HEALTHY BODY SERVICES, LLC (“Notices of
4 Violations”). THE PRODUCTS were identified in the Notices of Violations as containing lead
5 exceeding allowable levels. The Notices of Violations were issued pursuant to, and in
6 compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing
7 regulations regarding the notice of violations to be given to certain public enforcement agencies
8 and to the violator. The Notices of Violations were issued as follows:

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

 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

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

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

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

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

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

22 **SECOND CAUSE OF ACTION**

23 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning THE**
24 **PRODUCTS, which are identified in Plaintiff's October 22, 2010 and January 14, 2011 60-**
25 **Day Notices of Violations)**

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

27 33. On October 22, 2010 and January 14, 2011, Plaintiff sent 60-Day Notices of
28 Proposition 65 violations to the requisite public enforcement agencies and to Defendants

1 HEALTHY BODY SERVICES INC. and HEALTHY BODY SERVICES, LLC (“Notices of
2 Violations”). THE PRODUCTS were identified in the Notices of Violations as containing lead
3 exceeding allowable levels. The Notices of Violations were issued pursuant to, and in
4 compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing
5 regulations regarding the notice of violations to be given to certain public enforcement agencies
6 and to the violator. The Notices of Violations were issued as follows:

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

25 34. The appropriate public enforcement agencies have failed to commence and
26 diligently prosecute a cause of action under H&S Code §25249.35, *et seq.* against Defendants
27 based on the allegations herein.

28 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

1 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
2 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
3 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of
4 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
5 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
6 and will be used and/or handled by individuals in California, without Defendants providing clear
7 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
8 birth defects and other reproductive harm posed by exposure to lead through the use and/or
9 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
10 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
11 for use and/or handling to individuals in California.

12 36. By the above-described acts, Defendants are liable, pursuant to H&S Code
13 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
14 relating to THE PRODUCTS.

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

16 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for the following relief:


26 A. A preliminary and permanent injunction enjoining Defendants, their agents,
27 employees, assigns and all persons acting in concert or participating with Defendants, from
28 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.

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- B. An assessment of civil penalties against Defendants, pursuant to Health & Safety Code §25249.7(b), 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;
- D. An award of costs of suit herein; and
- E. Such other and further relief as may be just and proper.

Dated: September 26, 2011

LAW OFFICE OF PHILIP T. EMMONS

By: 
Philip T. Emmons
Attorney for Plaintiff
Environmental Research Center