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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF CONTRA COSTA

FILED

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K. TORRES, CLERK
COUNTY OF CONTRA COSTA

BY _____

C12-00630

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

13 Plaintiff,

14 v.

15 CREATIONS GARDEN NATURAL
16 PRODUCTS, INC.; CGNP
17 MANUFACTURING; CREATIONS
18 GARDEN; and DOES 1-50, inclusive,

19 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

PER LOCAL RULE 5 THIS
CASE IS ASSIGNED TO
DEPT _____

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,
28 distribute, market, sell, and/or otherwise continue to be involved in the chain of commerce of the
following ingestible products, which contain the chemical lead and which have been and

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

1 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to
2 individuals in California:

- 3 - CGNP Manufacturing Creation's Garden Cleansers Bowel Cleanse
- 4 - CGNP Manufacturing Creation's Garden Cleansers Liver Cleanser
- 5 - CGNP Manufacturing Creation's Garden Cleansers Parasite Cleanse
- 6 - CGNP Manufacturing Creation's Garden Cleansers Bowel & Parasite Cleanse
- 7 - CGNP Manufacturing Creation's Garden Cardio Cholestacor
- 8 - CGNP Manufacturing Creation's Garden Pure Hawaiian Spirulina
- 9 - CGNP Manufacturing Creation's Garden Certified Organic Dong Quai
- 10 - CGNP Manufacturing Creation's Garden Seed & Husk Psyllium
- 11 - CGNP Manufacturing Creation's Garden Una De Gato Cat's Claw
- 12 - CGNP Manufacturing Creation's Garden Energy & Fitness 4 in 1 Weight Loss
- 13 - CGNP Manufacturing Creation's Garden Energy & Fitness Fat Neutralizer
- 14 - CGNP Manufacturing Creation's Garden Energy & Fitness Appetite
15 Suppressant
- 16 - CGNP Manufacturing Creation's Garden Energy & Fitness Food For Life
- 17 - CGNP Manufacturing Creation's Garden Energy & Fitness Vegan Protein.

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

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

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

27 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued
28 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.

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1 meaning of H&S Code §25249.11(a). Defendants CREATIONS GARDEN NATURAL
2 PRODUCTS, INC., CGNP MANUFACTURING and CREATIONS GARDEN have
3 manufactured, packaged, distributed, marketed, sold and/or has otherwise been involved in the
4 chain of commerce of, and continue to manufacture, package, distribute, market, sell, and/or
5 otherwise continues to be involved in the chain of commerce of THE PRODUCTS for sale or use
6 in California. Defendants CREATIONS GARDEN NATURAL PRODUCTS, INC., CGNP
7 MANUFACTURING and CREATIONS GARDEN, at all times relevant to this action, have each
8 had 10 or more employees and is a “Person in the course of doing business” pursuant to H&S
9 Code §25249.11(b).

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

20 STATUTORY BACKGROUND

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

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

28 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....

1 California, as applicable.

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

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

7 **FIRST CAUSE OF ACTION**

8 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, et seq. concerning**
9 **THE PRODUCTS, which are identified in Plaintiff's March 25, 2011 60-Day Notice of**
10 **Violations)**

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

13 26. On March 25, 2011, Plaintiff sent a 60-Day Notice of Proposition 65 violations to
14 the requisite public enforcement agencies and to Defendants CREATIONS GARDEN
15 NATURAL PRODUCTS, INC., CGNP MANUFACTURING and CREATIONS GARDEN
16 ("Notice of Violations"). THE PRODUCTS were identified in the Notice of Violations as
17 containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to,
18 and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's
19 implementing regulations regarding the notice of violations to be given to certain public
20 enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- 21 a. Defendants CREATIONS GARDEN NATURAL PRODUCTS, INC.,
22 CGNP MANUFACTURING and CREATIONS GARDEN, and the
23 California Attorney General were provided copies by Certified Mail of the
24 Notice of Violations, along with a Certificate of Merit by the attorney for
25 the noticing party stating that there is a reasonable and meritorious cause
26 for this action. The requisite county district attorneys and city attorneys
27 were provided copies by First Class Mail of the Notice of Violations and
28 Certificate of Merit.
- b. Defendants CREATIONS GARDEN NATURAL PRODUCTS, INC.,
CGNP MANUFACTURING and CREATIONS GARDEN were provided,
with the Notice of Violations, a copy of a document entitled "The Safe

1 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
2 Summary," which is also known as Appendix A to Title 27 of CCR
3 §25903.

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

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

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

28 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.

1 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
2 Summary,” which is also known as Appendix A to Title 27 of CCR
3 §25903.

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

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

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

28 41. 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.

