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8 Environmental Research Center, Inc.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF CONTRA COSTA

11 C 12 - 01065

12 ENVIRONMENTAL RESEARCH
13 CENTER, INC.,

14 Case No.

15 Plaintiff,

16 **COMPLAINT FOR INJUNCTIVE
17 RELIEF AND CIVIL PENALTIES**

18 v.

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

20 TRC NUTRITIONAL LABORATORIES;
21 SEYCHELLES ORGANICS, INC.;
22 NUTRACEUTICAL CORPORATION;
23 NUTRACEUTICAL INTERNATIONAL
24 CORPORATION; and DOES 1-50,
25 inclusive,

26 PER LOCAL RULE 5 THIS
27 CASE IS ASSIGNED TO
28 DEPT 33

29 Defendants.

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

32 **INTRODUCTION**

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

36 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have
37 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
38 distribute, market, sell, and/or otherwise continue to be involved in the chain of commerce of the

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

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

- 4 - TRC Nutritional Laboratories Colon Klenz-R
- 5 - TRC Nutritional Laboratories Thermo 7 Diet

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

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

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

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

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

26 JURISDICTION AND VENUE

27 7. This Court has jurisdiction over this action pursuant to California Constitution
28 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 Contra Costa. 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.

14 PARTIES

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

19 11. ERC is a “Person” within the meaning of H&S Code §25118 and H&S Code
20 §25249.11(a), and brings this enforcement action “in the public interest” pursuant to H&S Code
21 §25249.7(d).

22 12. Defendant TRC NUTRITIONAL LABORATORIES is a company of unknown
23 form, and Defendants SEYCHELLES ORGANICS, INC., NUTRACEUTICAL
24 CORPORATION and NUTRACEUTICAL INTERNATIONAL CORPORATION are
25 corporations, each being a “Person” within the meaning of H&S Code §25249.11(a).
26 Defendants TRC NUTRITIONAL LABORATORIES, SEYCHELLES ORGANICS, INC.,
27 NUTRACEUTICAL CORPORATION and NUTRACEUTICAL INTERNATIONAL
28 CORPORATION have manufactured, packaged, distributed, marketed, sold and/or has otherwise

1 been involved in the chain of commerce of, and continue to manufacture, package, distribute,
2 market, sell, and/or otherwise continues to be involved in the chain of commerce of THE
3 PRODUCTS for sale or use in California. Based on information and belief, Defendants TRC
4 NUTRITIONAL LABORATORIES, SEYCHELLES ORGANICS, INC., NUTRACEUTICAL
5 CORPORATION and NUTRACEUTICAL INTERNATIONAL CORPORATION, at all times
6 relevant to this action, have each had and now has 10 or more employees and is a "Person in the
7 course of doing business" pursuant to H&S Code §25249.11(b).

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

18 STATUTORY BACKGROUND

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

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

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

1 reasonable warnings to such individuals.

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

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

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

10 **FIRST CAUSE OF ACTION**

11 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, et seq. concerning**
12 **THE PRODUCTS, which are identified in Plaintiff’s June 1, 2011 60-Day Notice of**
13 **Violations)**

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

16 26. On June 1, 2011, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the
17 requisite public enforcement agencies and to Defendants TRC NUTRITIONAL
18 LABORATORIES, SEYCHELLES ORGANICS, INC., NUTRACEUTICAL CORPORATION
19 and NUTRACEUTICAL INTERNATIONAL CORPORATION (“Notice of Violations”). THE
20 PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable
21 levels. The Notice of Violations was issued pursuant to, and in compliance with, the
22 requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the
23 notice of violations to be given to certain public enforcement agencies and to the violator. The
24 Notice of Violations was issued as follows:

- 25 a. Defendants TRC NUTRITIONAL LABORATORIES, SEYCHELLES
26 ORGANICS, INC., NUTRACEUTICAL CORPORATION and
27 NUTRACEUTICAL INTERNATIONAL CORPORATION, and the
28 California Attorney General were provided copies by Certified Mail of the
Notice of Violations, along with a Certificate of Merit by the attorney for

1 the noticing party stating that there is a reasonable and meritorious cause
2 for this action. The requisite county district attorneys and city attorneys
3 were provided copies by First Class Mail of the Notice of Violations and
4 Certificate of Merit.

5 b. Defendants TRC NUTRITIONAL LABORATORIES, SEYCHELLES
6 ORGANICS, INC., NUTRACEUTICAL CORPORATION and
7 NUTRACEUTICAL INTERNATIONAL CORPORATION were
8 provided, with the Notice of Violations, a copy of a document entitled
9 "The Safe Drinking Water and Toxic Enforcement Act of 1986
10 (Proposition 65): A Summary," which is also known as Appendix A to
11 Title 27 of CCR §25903.

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

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

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

1 and will be used and/or handled by individuals in California, without Defendants providing clear
2 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
3 birth defects and other reproductive harm posed by exposure to lead through the use and/or
4 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
5 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
6 for use and/or handling to individuals in California.

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

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

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

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

17 **SECOND CAUSE OF ACTION**

18 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning THE**
19 **PRODUCTS, which are identified in Plaintiff's June 1, 2011 60-Day Notice of Violations)**

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

22 33. On June 1, 2011, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the
23 requisite public enforcement agencies and to Defendants TRC NUTRITIONAL
24 LABORATORIES, SEYCHELLES ORGANICS, INC., NUTRACEUTICAL CORPORATION
25 and NUTRACEUTICAL INTERNATIONAL CORPORATION ("Notice of Violations"). THE
26 PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable
27 levels. The Notice of Violations was issued pursuant to, and in compliance with, the
28 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

1 Notice of Violations was issued as follows:

2 a. Defendants TRC NUTRITIONAL LABORATORIES, SEYCHELLES
3 ORGANICS, INC., NUTRACEUTICAL CORPORATION and
4 NUTRACEUTICAL INTERNATIONAL CORPORATION, and the
5 California Attorney General were provided copies by Certified Mail of the
6 Notice of Violations, along with a Certificate of Merit by the attorney for
7 the noticing party stating that there is a reasonable and meritorious cause
8 for this action. The requisite county district attorneys and city attorneys
9 were provided copies by First Class Mail of the Notice of Violations and
10 Certificate of Merit.

11 b. Defendants TRC NUTRITIONAL LABORATORIES, SEYCHELLES
12 ORGANICS, INC., NUTRACEUTICAL CORPORATION and
13 NUTRACEUTICAL INTERNATIONAL CORPORATION were
14 provided, with the Notice of Violations, a copy of a document entitled
15 "The Safe Drinking Water and Toxic Enforcement Act of 1986
16 (Proposition 65): A Summary," which is also known as Appendix A to
17 Title 27 of CCR §25903.

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

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

26 35. By committing the acts alleged in this Complaint, Defendants at all times relevant
27 to this action, and continuing through the present, have violated and continue to violate H&S
28 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing

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

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

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

17 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff prays for the following relief:

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

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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;

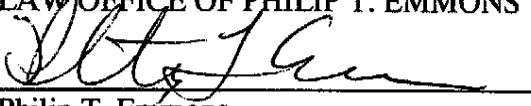
C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code of Civil Procedure §1021.5 or the substantial benefit theory;

D. An award of costs of suit herein; and

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

Dated: May 4, 2012

LAW OFFICE OF PHILIP T. EMMONS

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