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Superior Court of California,
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5 Attorneys for Plaintiff
6 Environmental Research Center

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8 SUPERIOR COURT OF CALIFORNIA
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10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

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12 ENVIRONMENTAL RESEARCH) **Case No.:** 30-2013-00887614-CU-MC-CJC
13 CENTER, a California non-profit)
14 corporation,) Judge Gregory H. Lewis
15 Plaintiff,) **COMPLAINT FOR INJUNCTIVE**
16 vs.) **RELIEF AND CIVIL PENALTIES**
17) **[Health & Safety Code § 25249.5, et seq.]**
18 HERITAGE HEALTH PRODUCTS) **[UNLIMITED CIVIL CASE - AMOUNT**
19 COMPANY and DOES 1-25, Inclusive,) **DEMANDED EXCEEDS \$25,000)]**
20 Defendants.)

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

23 **INTRODUCTION**

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

27 2. Defendant has manufactured, packaged, distributed, marketed, sold and/or have
28 otherwise been involved in the chain of commerce of, and continues to manufacture, package,
distribute, market, sell and/or otherwise continues to be involved in the chain of commerce of the

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 a. Heritage Health Products Company Heritage E-Lite II
- 5 b. Heritage Health Products Company Heritage Jubilee
- 6 c. Heritage Health Products Company Heritage E-Lite Nite
- 7 d. Heritage Health Products Company Heritage Emerald Green
- 8 e. Heritage Health Products Company Heritage Rejuvenate Wild Mexican Yam
- 9 f. Heritage Health Products Company Heritage Steel
- 10 g. Heritage Health Products Company Heritage Detox Colon Cleanser

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

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

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

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

28 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to

1 remedy Defendant’s failure to provide clear and reasonable warnings regarding exposures to the
2 lead.

3 **JURISDICTION AND VENUE**

4 7. This Court has jurisdiction over this action pursuant to California Constitution
5 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
6 those given by statute to other trial courts.” The statute under which this action is brought does
7 not specify any other basis for jurisdiction.

8 8. This Court has jurisdiction over Defendant because, based on information and
9 belief, each Defendant is a business having sufficient minimum contacts with California, or
10 otherwise intentionally availing itself of the California market through the marketing,
11 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of
12 jurisdiction over it by the California courts consistent with traditional notions of fair play and
13 substantial justice.

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

19 **PARTIES**

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

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

26 12. ERC alleges on information and belief that Defendant HERITAGE HEALTH
27 PRODUCTS COMPANY is a Colorado Corporation that is a person within the meaning of H&S
28 Code §25249.11(a).

1 13. Defendant manufactured, packaged, distributed, marketed, sold and/or has
2 otherwise been involved in the chain of commerce, and continues to manufacture, package,
3 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
4 THE PRODUCTS for sale or use in California. Defendant employs ten or more persons, and is
5 thus a “person in the course of doing business” within the meaning of Proposition 65.

6 14. Defendants DOES 1-25 are named herein under fictitious names, as their true
7 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
8 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
9 has otherwise been involved in the chain of commerce of, and continues to manufacture,
10 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of
11 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
12 actionable manner, for the events and happenings referred to herein, either through its conduct or
13 through the conduct of its agents, servants or employees, or in some other manner, causing the
14 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
15 names and capacities of DOES when ascertained.

16 15. Plaintiff is informed and believes and thereon alleges that each of the defendants
17 is in some manner responsible for the events set forth in this Complaint and proximately caused
18 the injuries and damages to Plaintiff as alleged in this Complaint.

19 16. Plaintiff is informed and believes and thereon alleges that at all material times,
20 defendants, and each of them, were the agents, servants, and employees of the other defendant,
21 and each of them in such a way as to cause each defendant to be jointly and severally liable and
22 responsible for the conduct of one another. The conduct of each defendant was within the course
23 and scope of the authority granted each defendant by the other defendant. Each defendant ratified
24 and approved of the acts or omissions of each other such as to cause each to be jointly and
25 severally liable for the conduct of each other defendant.

26 **STATUTORY BACKGROUND**

27 17. The People of the State of California have declared in Proposition 65 their right
28 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other

1 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

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

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

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

15 **FACTUAL BACKGROUND**

16 20. On February 27, 1987, the State of California officially listed the chemical lead as
17 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the
18 warning requirement one year later and was therefore subject to the “clear and reasonable”
19 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
20 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

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

25 22. Plaintiff is informed and believes, and based on such information and belief,
26 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
27 California without the requisite clear and reasonable warnings before, on, and after August 5,
28 2008. THE PRODUCTS continue to be marketed, distributed and sold in California without the

1 requisite warning information.

2 23. As a proximate result of acts by Defendant, as a person in the course of doing
3 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
4 California, including in the County of Orange, have been exposed to lead without clear and
5 reasonable warnings. The individuals subject to exposures to lead include normal and
6 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE
7 PRODUCTS.

8 24. At all times relevant to this action, Defendant has knowingly and intentionally
9 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and
10 reasonable warnings to such individuals.

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

14 26. At all times relevant to this action, Defendant has, in the course of doing business,
15 failed to provide individuals using and/or handling THE PRODUCTS with clear and reasonable
16 warnings that THE PRODUCTS expose individuals to lead.

17 27. Upon information and belief, Plaintiff alleges THE PRODUCTS continue to be
18 marketed, distributed, and/or sold in California without the requisite clear and reasonable
19 warnings.

20 **FIRST CAUSE OF ACTION**

21 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.*)**

22 28. Plaintiff hereby incorporates by reference each and every preceding allegation and
23 paragraph as though fully set forth in this cause of action.

24 29. On August 5, 2011 and September 17, 2012, Plaintiff sent separate 60-Day Notice
25 of Proposition 65 violations to the requisite public enforcement agencies and to defendant
26 HERITAGE HEALTH PRODUCTS COMPANY (“Notices of Violations”). The Notices of
27 Violations were issued pursuant to, and in compliance with, the requirements of H&S Code
28 §25249.7(d) and the statute’s implementing regulations regarding the notices of violations to be

1 given to certain public enforcement agencies and to the violator. The Notices of Violations were
2 issued as follows:

- 3 a. Defendant HERITAGE HEALTH PRODUCTS COMPANY and the California
4 Attorney General were provided copies by Priority Mail of the Notices of
5 Violations, along with a Certificate of Merit by the attorney for the noticing party
6 stating that there is a reasonable and meritorious cause for this action. The
7 requisite county district attorneys and city attorneys were provided copies by
8 Priority Mail of the Notices of Violations and Certificate of Merit.
- 9 b. Defendant HERITAGE HEALTH PRODUCTS COMPANY was provided, with
10 the Notices of Violations, a copy of a document entitled “The Safe Drinking
11 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which
12 is also known as Appendix A to Title 27 of CCR § 25903.
- 13 c. The California Attorney General was provided, with the Notices of Violations,
14 additional factual information sufficient to establish a basis for the Certificate of
15 Merit, including the identity of the persons consulted with and relied on by the
16 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
17 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

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

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

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

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

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

17 35. Wherefore, Plaintiff prays judgment against Defendant, as set forth hereafter.

18 **SECOND CAUSE OF ACTION**

19 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq.)**

20 36. Plaintiff hereby incorporates by reference each and every preceding allegation and
21 paragraph as though fully set forth in this cause of action.

22 37. On August 5, 2011 and September 17, 2012, Plaintiff sent separate 60-Day Notice
23 of Proposition 65 violations to the requisite public enforcement agencies and to defendant
24 HERITAGE HEALTH PRODUCTS COMPANY (“Notices of Violations”). The Notices of
25 Violations were issued pursuant to, and in compliance with, the requirements of H&S Code
26 §25249.7(d) and the statute’s implementing regulations regarding the notices of violations to be
27 given to certain public enforcement agencies and to the violator. The Notices of Violations were
28 issued as follows:

- 1 a. Defendant HERITAGE HEALTH PRODUCTS COMPANY and the California
2 Attorney General were provided copies by Priority Mail of the Notices of
3 Violations, along with a Certificate of Merit by the attorney for the noticing party
4 stating that there is a reasonable and meritorious cause for this action. The
5 requisite county district attorneys and city attorneys were provided copies by
6 Priority Mail of the Notices of Violations and Certificate of Merit.
- 7 b. Defendant HERITAGE HEALTH PRODUCTS COMPANY was provided, with
8 the Notices of Violations, a copy of a document entitled “The Safe Drinking
9 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which
10 is also known as Appendix A to Title 27 of CCR § 25903.
- 11 c. The California Attorney General was provided, with the Notices of Violations,
12 additional factual information sufficient to establish a basis for the Certificate of
13 Merit, including the identity of the persons consulted with and relied on by the
14 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
15 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

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

1 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
2 birth defects and other reproductive harm posed by exposure to lead through the use and/or
3 handling of THE PRODUCTS. Furthermore, Defendant have threatened to violate H&S Code
4 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
5 for use and/or handling to individuals in California.

6 40. By the above-described acts, Defendant is liable, pursuant to H&S Code
7 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
8 relating to THE PRODUCTS.

9 41. Wherefore, Plaintiff prays judgment against Defendant, as set forth hereafter.

10 **THE NEED FOR INJUNCTIVE RELIEF**

11 42. Plaintiff hereby incorporates by reference each and every preceding allegation and
12 paragraph as though fully set forth in this cause of action.

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

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff prays for the following relief against Defendant HERITAGE
20 HEALTH PRODUCTS COMPANY:

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

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

28 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code

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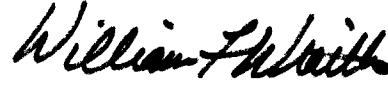
of Civil Procedure §1021.5 or the substantial benefit theory;

D. An award of costs of suit herein; and

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

Dated: August 7, 2013

WRAITH LAW



By: _____
WILLIAM F. WRAITH
Attorney for Plaintiff Environmental
Research Center